

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1771-1920

VOLUME 20 of 21

EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT # : 2003-0071-CR

Roy Harris - CROSS

1 Evans had to move up in order to do that, and he had
2 to speak louder in order for this man to respond,
3 according to the own witness. So the objection is not
4 well taken. It's overruled.

5 BY MR. EVANS: May I--

6 BY THE COURT: -- Do not argue with him though or
7 badger him, Mr. Evans.

8 BY MR. EVANS: Yes, sir. May I proceed, Your
9 Honor?

10 BY THE COURT: Yes.

11 BY MR. EVANS:

12 Q. Do you remember further saying that after y'all saw
13 the person the second time up around 51, that you took
14 Clemmie over to her mother's house?

15 A. No, sir. I didn't say nothing like that.

16 Q. You can't read; is that right?

17 A. That's right.

18 Q. Mr. Harris, I want to make sure I understand you.

19 You are admitting that on at least two different occasions,
20 one that Mr. Johnson was there and one that he was not there,
21 that you have given statements that as y'all were going down
22 Church Street, Clemmie Fleming said, "There goes Curtis
23 Flowers"; is that right?

24 A. That's what Clemmie Fleming said. But I didn't
25 witness to it. All I, I got out of the office because he had
26 made me mad, and I didn't want to witness. He didn't want to
27 hear what I had to say, but he wanted me to witness to what
28 Clemmie Fleming said.

29 Q. At a hearing did you not say that under oath?

FILED

APR 14 2004

JULIE H. HALFACRE, CIRCUIT CLERK

Roy Harris - CROSS - REDIRECT

1 A. What's that now?

2 Q. At a hearing did you not say that under oath?

3 A. (Very softly) I don't know where that at.

4 Q. You know what I'm talking about, don't you?

5 A. (Witness shakes his head.)

6 Q. Have you ever taken an oath to tell the truth and
7 said that Clemmie Fleming said, "There goes Curtis Flowers"?

8 A. I say I thought she said something like that. I
9 didn't say she said, "There goes Curtis Flowers."

10 BY MR. EVANS: Your Honor, I don't have any
11 further questions of this witness.

12 BY THE WITNESS:

13 A. Because I didn't have no hearing aid on or nothing
14 like that, and if Mr. Johnson, if -- how come I had to
15 hitchhike back home?

16 BY THE COURT: Mr. Carter.

17 (Defense Counsel confer.)

18 REDIRECT EXAMINATION BY MR. CARTER:

19 Q. Mr. Harris, you did not see Curtis Flowers running;
20 is that correct?

21 A. No, sir. I sure haven't.

22 Q. This is Curtis Flowers right here. You did not see
23 this man running; is that correct?

24 A. (Witness shakes his head.) Well, I can say one
25 thing.

26 BY MR. EVANS: Your Honor, I would ask --

27 BY THE WITNESS: --if it was Mr. Flowers--

28 BY MR. EVANS: --that he be responsive to the
29 questions.

Mike McSparrin - DIRECT

1 BY MR. CARTER: Stop.

2 BY THE COURT: He needs to answer your question.
3 Then he can explain it.

4 BY MR. CARTER: One moment.

5 (Defense Counsel confer.)

6 BY MR. CARTER: No further questions, Your Honor.
7 You can go, Mr. Harris.

8 BY THE COURT: You are free to go, Mr. Harris.

9 BY THE WITNESS: I can go?

10 BY THE COURT: Yes, sir.

11 WITNESS EXCUSED.

12 BY THE COURT: Who will you have next?

13 BY MR. CARTER: Mike McSparrin. Oh, one minute.
14 I have one more before him if she is here.

15 (Mr. Carter leaves the courtroom briefly and
16 returns.)

17 BY MR. CARTER: Mike McSparrin, Your Honor.

18 MIKE MCSPARRIN,
19 a white male called to testify as a witness by the Defendant,
20 having first been duly sworn, testified as follows, to-wit:

21 BY THE COURT: Have a seat up here, sir. State
22 your name.

23 BY THE WITNESS: Mike McSparrin. That is spelled
24 M C S P A R R I N.

25 DIRECT EXAMINATION BY MR. CARTER:

26 Q. Okay, Mr. McSparrin, where do you work presently?

27 A. I work for the Criminal Information Center,
28 Department of Public Safety.

29 Q. And where did you work in 1996?

Mike McSparrin - DIRECT

1 A. In 1996, I was employed by the Mississippi State
2 Crime Laboratory.

3 Q. In what capacity?

4 A. I was a certified latent print examiner.

5 Q. Fingerprint examiner; is that the same thing?

6 A. Yes.

7 Q. Now could you tell us something about your
8 educational background?

9 BY MR. EVANS: Your Honor, I will stipulate that
10 he is an expert in the field of fingerprints.

11 BY MR. CARTER: Okay.

12 BY THE COURT: I accept him as an expert in that
13 field.

14 BY MR. CARTER:

15 Q. Did you have the occasion to do some work on a case
16 involving the State of Mississippi versus Curtis Flowers?

17 A. Yes, I did.

18 Q. Can you tell us what you were asked to do and what
19 you did?

20 A. Well, as a latent print examiner, there was some
21 evidence from the crime scene that I was asked to examine in
22 this particular case.

23 Q. Okay. Can you, do you have your file with you?

24 A. Yes, I do.

25 Q. Can you be more specific in terms of what you were
26 asked to do and what you did?

27 BY THE WITNESS: Your Honor, if I could go to my
28 notes?

29 BY THE COURT: Yes.

Mike McSparrin - DIRECT

BY THE WITNESS:

A. Specifically, I was asked to look at some latent lifts that came from a crime scene, and I was also asked to process some evidence, some casings, and a shoe box and a bank bag and a bank receipt book.

Q. And did you find any fingerprints or any evidence that connected Mr. Flowers to this crime?

A. No.

BY MR. CARTER: One moment.

(Defense Counsel confer.)

Q. Could you tell the jury what it is you do to determine -- when you get lifts that come to you, do you know whether or not they are already prints that -- explain what it is you get or receive?

A. Well, in this particular case, I received some lifts that were taken at the scene by crime scene investigator. These lifts were submitted to me. I evaluate them to see if there is any fingerprints, latent prints of value on these lifts, and once I make this determination, I label them, number them.

Q. Did you find any latent prints of value?

A. On the lifts from the crime scene, yes, I did. There were six. I labeled them L-1 through L-6.

Q. Okay, and you got latent prints of value, I believe, from a shoe box too; is that correct?

A. Yes, I did. I processed -- the shoe box was submitted as a piece of evidence, and I processed that shoe box to see if I could develop some latent prints on that shoe box.

Mike McSparrin - DIRECT

1 Q. And did you also receive some known prints?

2 A. Yes, I did.

3 Q. -- that were used for comparison?

4 A. Yes, I did.

5 Q. Whose prints were those? Well, strike that. Did
6 you receive known prints from the Defendant?

7 A. Curtis Flowers?

8 Q. Yes.

9 A. Yes, I did.

10 Q. And you were able to take the known prints versus
11 the unknown prints you had and make some comparisons; is that
12 correct?

13 A. I did conduct a comparison between the two; yes, I
14 did.

15 Q. Okay, and you didn't find Mr. Flowers' prints on
16 anything that you examined; is that correct?

17 A. There was -- no identification was effected.

18 Q. Okay. One moment.

19 (Defense Counsel confer.)

20 Q. Now is it true that with respect to individuals,
21 that we all have or supposedly have different, I guess, or
22 unique prints; is that correct?

23 A. That is correct. No two individuals ever have been
24 found to have the same fingerprints. That is correct.

25 Q. And when you are looking at fingerprints, you
26 examine the starts, stops and the dots within the, I guess a
27 person's fingers or hands?

28 A. The identification characteristics located on the
29 friction ridge skin of an individual's hands or on the bottom

Mike McSparrin - DIRECT - CROSS

1 of their feet.

2 Q. Or on the bottom of their feet. Now with respect
3 to a shoe box like that, is that a good object to contain
4 fingerprints?

5 A. That was an excellent piece of evidence, yes.

6 Q. Now how long does prints last? Is there any life
7 of, as far as you know, of a print?

8 A. Scientifically, there is no way to age a latent
9 print that can be left on a surface.

10 BY MR. CARTER: We tender.

11 CROSS-EXAMINATION BY MR. EVANS:

12 Q. Good morning, Mr. McSparrin.

13 A. Good morning.

14 Q. Have you been advised of what type of business this
15 was?

16 A. Where the crime scene took place?

17 Q. Yes, sir.

18 A. Other than just in my notes, a furniture store to
19 my knowledge.

20 Q. Okay. And is that the type of place you would
21 expect a lot of people to come in and handle things?

22 A. Retail, I would expect a lot of people to come in
23 if they are shopping, yes.

24 Q. Have you also been advised that the Defendant was
25 an employee there?

26 A. Yes.

27 Q. So you would expect his prints to have been in the
28 store somewhere anyway, wouldn't you?

29 A. He has legitimate access to the facility, yes.

Mike McSparrin - CROSS

1 Q. Just like the victims in this case?

2 A. Yes.

3 Q. Now were the officers' prints that handled the shoe
4 box submitted to you?

5 A. No, they were not.

6 Q. Okay, so you don't know if the few prints that you
7 got off of there were the officers or not?

8 A. No, I do not.

9 Q. Now where you have got a business and an employee
10 is the suspect, do prints make much difference to you if you
11 find prints in an open place?

12 A. It depends on the circumstances. If let's say you
13 found prints in blood, yes, that could have a bearing. Yes,
14 it could.

15 Q. Okay, but just on the counter, things like that?

16 A. If they have legitimate access, they could have
17 handled it at any time.

18 BY MR. EVANS: Nothing further, Your Honor.

19 BY MR. CARTER: One moment, Your Honor.

20 (Defense Counsel confer.)

21 BY MR. CARTER: No more questions.

22 BY THE COURT: All right, is he finally excused?

23 BY MR. CARTER: Yes.

24 BY THE COURT: You are free to go, sir.

25 BY THE WITNESS: Thank you.

26 WITNESS EXCUSED.

27 BY THE COURT: Who do you have next?

28 BY MR. CARTER: Let me see, Your Honor, if this
29 other person showed up.

Bench Conference

1 (Mr. Carter leaves the courtroom briefly and
2 returns.)

3 BY MR. CARTER: Your Honor, one second.

4 (Defense Counsel confer followed by CONFERENCE AT
5 THE BENCH OUT OF THE HEARING OF THE JURY AS FOLLOWS:)

6 BY MR. CARTER: Well, Your Honor, I'm scared, I'm
7 reluctant to say this because you have asked us have
8 we wanted you to force people to be here and we said
9 no. We have another witness named Stacy Wright who is
10 a student at Ole Miss. And apparently she is not
11 here, and we don't know if she is on her way or what
12 the situation is. I was wondering if the Court could
13 give us five minutes or ten minutes just to call and
14 see where she is. And if she is not here in a small
15 amount of time, we will just have to forget about it
16 even though we want her.

17 BY THE COURT: Okay, I'm going to take a short
18 break to let you do that, but I want the record to
19 reflect that her name was mentioned to me yesterday.
20 I asked if she had been subpoenaed, and she was
21 subpoenaed and served. My understanding is - correct
22 me if I'm wrong, Mr. Carter - but you released her; is
23 that right?

24 BY MR. CARTER: No. Well, she never actually
25 showed up in the first place and we--

26 BY THE COURT: Did you bring that to the Court's
27 attention?

28 BY MR. CARTER: No, sir. I didn't.

29 BY THE COURT: The Defense announced ready at the

Randy Keenum - DIRECT

1 beginning of this trial. That means that they are
2 responsible for their witnesses. As of yesterday, I
3 knew about this witness, knew she had been subpoenaed,
4 and offered to issue an attachment for that witness.
5 The Defense declined that offer, and with the
6 understanding that she would be here today. I will
7 give you the five or ten minutes to find out what the
8 situation is, but if she is not on the way or -- well,
9 I will wait to evaluate it when you tell me what the
10 deal is, but we have got to go forward. Okay?

11 BY MR. CARTER: Yes, sir.

12 END BENCH CONFERENCE.

13 BY THE COURT: We will take a short break, ladies
14 and gentlemen.

15 (FOLLOWING A TWENTY MINUTE RECESS, THE TRIAL
16 RESUMED IN OPEN COURT WITH ALL COUNSEL, THE DEFENDANT, AND
17 THE JURY PRESENT:)

18 BY THE COURT: Who will you have next?

19 BY MR. CARTER: Your Honor, we rest.

20 DEFENDANT RESTS.

21 BY THE COURT: Okay. Rebuttal?

22 BY MR. EVANS: Randy Keenum will be first, Your
23 Honor.

24 RANDY KEENUM,

25 a white male called to testify as a witness by the State of
26 Mississippi IN REBUTTAL, having first been duly sworn,
27 testified as follows, to-wit:

28 BY THE COURT: State your name, please.

29 BY THE WITNESS: Randy Keenum.

Randy Keenum - DIRECT

1 BY THE COURT REPORTER: Spell your last name.

2 BY MR. EVANS: Good morning--

3 BY THE COURT: --Wait just a second. She needs
4 him to spell it.

5 BY THE WITNESS: K E E N U N.

6 DIRECT EXAMINATION BY MR. EVANS:

7 Q. Good morning, Mr. Keenum.

8 A. Good morning.

9 Q. Mr. Keenum, where do you work?

10 A. At this time I work for Bennett's Transport.

11 Q. I want to direct your attention back to July of
12 1996, and I will ask you where you worked at that time?

13 A. For Angelica.

14 Q. For Angelica?

15 A. Yes, sir.

16 Q. If you would, speak up just a little bit.

17 A. All right.

18 Q. What hours did you work there?

19 A. Oh, I opened the plant up about 6:30 until 3
20 o'clock in the afternoon.

21 Q. I want to direct your attention specifically to the
22 day of the murders at Tardy Furniture. Do you remember that
23 day?

24 A. Yes, sir.

25 Q. Do you know a person by the name of Doyle Simpson?

26 A. Yes, sir.

27 Q. Can you tell the ladies and gentlemen of the jury
28 where he was from say 9:20 that morning until 10:20 that
29 morning?

Randy Keenum - DIRECT - CROSS

1 A. Yes, sir. We always took break at 9:20. The plant
2 had two breaks. We weren't on production, so we usually took
3 more than one. So we usually took break from about 9:20
4 until a quarter to 10:00. And then we would go back to work.

5 Q. Okay. And that particular morning, do you know
6 where Doyle Simpson was from 9:20 until say 10:20?

7 A. Yes, sir. He was there at the plant.

8 Q. He was at Angelica?

9 A. Yes, sir.

10 BY MR. EVANS: Nothing further, Your Honor.

11 CROSS-EXAMINATION BY MR. CARTER:

12 Q. Mr. Keenum, had you given Mr. Evans or Mr. Johnson
13 or anybody a statement before regarding your testimony today?

14 A. No, not a statement. I have talked to them, you
15 know, whenever all this happened, but not really a statement.

16 Q. Okay, when did you talk to them?

17 A. Oh, after the murders.

18 Q. When after the murders?

19 A. The day, I don't know. You know, it was several
20 days after it.

21 Q. Now who did you give the statement to?

22 A. I talked to John.

23 Q. John Johnson?

24 A. Johnson.

25 Q. Did John Johnson have a tape recorder running?

26 A. No.

27 Q. Did he make any notes?

28 A. I don't know.

29 Q. What do you do at Angelica? What did you do at

Randy Keenum - CROSS

Angelica?

1 A. Maintenance. I was in the maintenance end of it.

2 Q. You was in the maintenance area?

3 A. Uh-hum.

4 Q. And tell me what you did all that day?

5 A. All that day?

6 Q. All that day. How long did you work? What was
7 your hours that day?

8 A. From 6:30 to 3 o'clock.

9 Q. What did you do at 6:30 when you got there?

10 A. I opened the door, went in, turned on the lights,
11 cranked up the air compressors, the boiler, the vacuum.

12 Q. Okay, that is something you routinely do? Is
13 that--

14 A. -- every day.

15 Q. What did you do after you did that on that
16 particular day?

17 A. Usually I would get a Mountain Dew and drink it
18 every morning.

19 Q. Did you get a Mountain Dew that day?

20 A. Oh, I am sure I did.

21 Q. Okay. And what did you do after the Mountain Dew?

22 A. If there was any machines left over, you know, from
23 the day before that were broke, I would go out and start
24 fixing on those.

25 Q. Okay, how many machines were left open that day?

26 A. I don't know exactly. Usually we tried to get them
27 all, but sometimes it would be two or three.

28 Q. How many machines did you fix that day?

Randy Keenum - CROSS

1 A. Oh, I can't tell you that.

2 Q. What did you do after possibly looking at the
3 machines?

4 A. By that time the ladies was there. We went to
5 work. You know, they went to work. The supervisors come up,
6 rolled up the machines, and we, you know -- myself and
7 Reverend Johnny Butts and Kenny Johnson, you know, we worked
8 on the sewing machines.

9 Q. On the sewing machines?

10 A. Yeah, it was a sewing factory.

11 Q. Is that what you did almost every day?

12 A. No, that's what I did every day. That was my job,
13 you know.

14 Q. What did Doyle Simpson have on that day?

15 A. I don't know. I can't tell you that. I don't have
16 a clue. But I know we sat there and ate, you know.

17 Q. What did he eat?

18 A. What did he eat?

19 Q. Yes.

20 A. I don't know. His mother always fixed him a plate.
21 I don't, you know, I don't know. I probably, more than
22 likely, I would more than likely eat like a pop tart or
23 something like that, and Doyle always had a meal. You know,
24 it's a home cooked meal. You know, this is not something we
25 did occasionally. We took break together every day. I mean
26 you know, we took a break in the shop. We didn't go up there
27 where the ladies was. We had our own little refrigerator and
28 our own microwave in the shop. We would come in; we would
29 sit down; and we would eat, take break, laugh, joke,

Randy Keenum - CROSS

1 whatever. And the ladies would go back to work. Well, you
2 know, we didn't have to because we weren't fighting
3 production, so we would sit back there and have a good time
4 more or less.

5 Q. How long did y'all break that day?

6 A. The break started at 9:20 because we had a buzzer
7 that went off. And we was probably quarter to 10:00 or so.
8 We went back and I went to work, and Doyle went back to
9 sweeping floors. I know that because I saw him sweeping the
10 floor.

11 Q. Now do you read and write?

12 A. Yes.

13 Q. Did Mr. Johnson ask you to write out a statement
14 about what you saw?

15 A. No.

16 Q. Did he even ask you if you could read and write?

17 A. No. I assumed that he knew I could read and write.
18 I don't know. I meant -- I will be glad to tell him now if
19 you need me to.

20 BY MR. CARTER: One minute.

21 (Defense Counsel confer.)

22 Q. Mr. Keenum, where did you talk to John Johnson at?
23 Where were you?

24 A. I believe I come and met him at the police
25 department here in town, which it was over by Oliver's
26 Funeral Home at that time.

27 Q. Are you sure?

28 A. I am pretty well positive.

29 Q. How long were you there?

Randy Keenum - CROSS

1 A. I don't know that. John and I have been friends a
2 long time. I imagine we -- you know, I don't know; we just
3 talked.

4 Q. He is your friend? Okay, what did you have on that
5 day that you gave that statement to Mr. Johnson? You don't
6 remember?

7 A. I am sure it was Levi blue jeans because that's all
8 I ever wear, but other than that, I can't tell you about it.

9 Q. Okay. What exactly did Mr. Johnson ask you?

10 A. Exactly? Seems like it was did I remember Doyle
11 being at the plant.

12 Q. Okay.

13 A. I told him yeah -- yeah, that we took break
14 together.

15 Q. Okay, how long did you break that day?

16 A. The same. It was probably, it was about like from
17 9:20 -- like I say, we had a buzzer that went off. I was
18 always in the shop at 9:20, take a break and eat and sit
19 there and laugh and all. If a truck driver or something come
20 in, probably a quarter to 10:00 or maybe ten minutes to
21 10:00, something like that, I probably got up and went back
22 out there and went to work. I was riding the clock. You
23 know, I'm not going to sit here and tell you no lie.

24 Q. So you have to -- when you take your break, you
25 clock out?

26 A. No.

27 Q. How long are your breaks?

28 A. Ten minutes is what the ladies got. They got from
29 9:20 to 9:30. It was like half of the plant got that, you

Randy Keenum - CROSS

1 know. Okay, this half went back to work. The buzzer went
2 off, you know. This bunch here come in, and they got ten
3 minutes off.

4 Q. So the breaks are normally ten minutes for
5 everybody?

6 A. Right. The ladies were on production. You know,
7 they didn't want to be off over ten minutes because--

8 Q. -- What about Doyle?

9 A. Oh, no, Doyle was like us. He was working by the
10 hour.

11 Q. Okay, so y'all didn't have no--

12 A. (Witness shakes his head.)

13 Q. Did y'all clock in? Did you have to clock in when
14 you get there in morning?

15 A. Yeah, well, we wrote it in. We didn't punch a
16 clock.

17 Q. Okay, but you wrote it in so that they would know
18 that you were there?

19 A. Right. Yes, on a time clock, sure did.

20 BY MR. CARTER: One moment. I think I'm
21 finished.

22 (Defense Counsel confer.)

23 BY MR. CARTER: No further questions, Your Honor.

24 BY MR. EVANS: Nothing further, Your Honor. We
25 would ask that he be released.

26 BY THE COURT: You are free to go.

27 BY THE WITNESS: Thank you, sir.

28 WITNESS EXCUSED.

29 BY MR. EVANS: Jack Matthews.

Jack Matthews - DIRECT

1 JACK MATTHEWS,

2 a white male recalled to testify by the State of Mississippi,
3 this time in REBUTTAL, having been previously sworn,
4 testified again as follows, to-wit:

5 BY THE COURT: State your name, please, sir.

6 BY THE WITNESS: Jack Matthews.

7 DIRECT EXAMINATION BY MR. EVANS:

8 Q. For the record, you are the same Jack Matthews that
9 has previously testified in this case; is that correct?

10 A. Yes, sir.

11 Q. Mr. Matthews, you have testified earlier that the
12 shoes you took off of the Defendant Curtis Flowers were size
13 10 1/2; is that correct?

14 A. Yes, sir.

15 Q. Do you have those shoes here with you today?

16 A. Yes, sir. I do.

17 Q. Would you produce them, please.

18 A. (Witness complies.)

19 BY MR. EVANS: Your Honor, may I have this
20 exhibit marked for identification?

21 BY THE COURT: Yes.

22 (SACK CONTAINING NIKE TENNIS SHOES WAS MARKED AS
23 STATE'S EXHIBIT S-125 FOR IDENTIFICATION, and they were shown
24 to Defense Counsel.)

25 BY MR. EVANS:

26 Q. Mr. Matthews, Exhibit 125, is this the shoes that
27 you took from the Defendant that showed they were size ten
28 and a half's?

29 A. Yes, sir.

Jack Matthews - DIRECT

1 **BY MR. EVANS:** Your Honor, I offer this Exhibit
2 125 into evidence.

3 **BY MR. CARTER:** Your Honor, we object. We didn't
4 see any size on them.

5 **BY THE WITNESS:** I will show you.

6 **BY MR. EVANS:** We will cover that in a minute,
7 but at this point I am offering them into evidence
8 because they are the shoes he took from him--

9 **BY MR. CARTER:** -- No objection other than that.

10 **BY THE COURT:** Okay. That objection is
11 overruled. Let them be admitted.

12 (SACK CONTAINING NIKE SHOES PREVIOUSLY MARKED AS
13 STATE'S EXHIBIT S-125 FOR IDENTIFICATION WAS NOW RECEIVED IN
14 EVIDENCE.)

15 BY MR. EVANS:

16 Q. I will hand you Exhibit 125 back, and I will ask
17 you if these shoes have the size marked in them?

18 A. Yes, sir. They do.

19 Q. Would you pull one of them out so that you can show
20 the jury what the size is in the shoe.

21 **BY MR. EVANS:** May the witness step down, Your
22 Honor?

23 **BY THE COURT:** Yes.

24 BY MR. EVANS:

25 Q. If you would, show the jury where the size is and
26 what the size in that shoe is.

27 A. Okay. You have got a tag right down here in the
28 shoe.

29 Q. You can step up closer to the jury box if you would

Jack Matthews - DIRECT

1 like to.

2 A. You have this tag right here in the shoe, and it
3 shows 10.5, which means 10 1/2 US shoe.

4 Q. If you would, before we pass it, walk down to where
5 the other jurors can see where you are pointing to.

6 A. (Witness complies.) Both shoes have this tag in
7 them.

8 Q. All right.

9 BY MR. CARTER: Let me see it.

10 BY MR. EVANS: May I pass this exhibit to the
11 jury, Your Honor?

12 BY THE COURT: It has been admitted. You can.
13 Has it been marked?

14 BY MR. EVANS: The composite exhibit has been
15 marked, the bag with the two shoes in it. I am just
16 passing one of the shoes that was in the exhibit
17 instead of passing the whole bag, with the Court's
18 approval.

19 BY THE COURT: Why don't we mark those exhibits
20 the way we did those others.

21 BY MR. EVANS: All right, sir.

22 BY THE COURT: As S--

23 BY MR. EVANS: As A and B?

24 BY THE COURT: A and B, yeah.

25 (LEFT NIKE TENNIS SHOE WAS MARKED AS STATE'S
26 EXHIBIT S-125A AND THE RIGHT SHOE AS S-125B, BOTH IN
27 EVIDENCE.)

28 BY MR. EVANS: All right, Your Honor, Exhibit
29 125A, I will pass to the jury.

Jack Matthews - CROSS - REDIRECT

1 BY THE COURT: Okay.

2 BY MR. EVANS: And I will tender this witness.

3 CROSS-EXAMINATION BY MR. CARTER:

4 Q. Mr. Matthews, where did you obtain those shoes from
5 Mr. Flowers? Where were you when you obtained them?

6 A. At the Winona Police Department.

7 Q. Are those the only ones you obtained?

8 A. I believe we obtained another pair from his
9 residence.

10 Q. Okay. Now you are saying that you got a pair of
11 ten and a half shoes from Mr. Flowers. But can you also say
12 that you know for a fact that Mr. Flowers didn't have or
13 purchase any shoes that were size 11 also? Are you saying--

14 A. -- The only shoes I know anything about are the
15 ones that we got off his feet here.

16 Q. Okay, so it could--

17 A. --these shoes that day.

18 Q. With that being the case, he could also have some
19 11's; isn't that correct?

20 A. I'm sure it's possible.

21 BY MR. CARTER: No further questions.

22 REDIRECT EXAMINATION BY MR. EVANS:

23 Q. The shoes that you took off of his feet were size
24 ten and a half; is that correct?

25 A. Yes, sir.

26 BY MR. EVANS: Further nothing of this witness,
27 Your Honor.

28 BY THE COURT: Is he finally excused?

29 BY MR. EVANS: Yes, sir.

Bill Thornburg - DIRECT

WITNESS EXCUSED.

BY THE COURT: All right. Who do you have next?

BY MR. EVANS: Sheriff Bill Thornburg.

BILL THORNBURG,

a white male called to testify again as a witness by the State of Mississippi, this time in REBUTTAL, having been previously sworn, testified as follows, to-wit:

BY THE COURT: State your name, please.

BY THE WITNESS: Bill Thornburg.

BY MR. EVANS: May I proceed, Your Honor?

BY THE COURT: Yes.

DIRECT EXAMINATION BY MR. EVANS:

Q. Sheriff, you are the same Sheriff Bill Thornburg that has testified earlier in this case; is that correct?

A. Yes, sir.

Q. Sheriff, when you recovered Exhibit 79A -- well, first, before you recovered it, when you first saw Exhibit 79A, where was it?

A. It was in the back bedroom of the apartments in a chest of drawer that had nothing in it but the shoe box.

Q. Was anything in the shoe box?

A. It was not.

Q. So nothing was being stored in this box when you first found it?

A. No, sir.

Q. Sheriff, during your investigation, did you have an occasion to see and observe at different times the vehicle that was owned by Doyle Simpson?

A. Yes, sir. I did.

Bill Thornburg - DIRECT

1 Q. What is the color of that car?

2 A. It's a kind of a copper brown, solid color.

3 Q. Is it -- solid color. It does not have any
4 stripes, dark or light on it, does it?

5 A. No, sir.

6 Q. Now Sheriff, if somebody testified it had a dark
7 stripe down the side of it, would that be correct?

8 A. No, sir.

9 BY MR. CARTER: I object, Your Honor. That is an
10 improper question.

11 BY THE COURT: Sustained.

12 BY MR. EVANS:

13 Q. Now the photograph 99A, I will ask you to look at
14 this photograph right here. Can you explain to the ladies
15 and gentlemen of the jury why this bottom part of that
16 photograph looks dark?

17 A. Could I?

18 Q. Yes, sir. You may step down.

19 A. (Witness steps down in front of large photograph on
20 board.) The reason it's looking dark there, it is kind of in
21 a shadow.

22 Q. Okay. But the car is solid color; is that correct?

23 A. Yes, sir.

24 Q. You may have a seat.

25 A. (Witness resumes witness stand.)

26 BY MR. EVANS: Tender the witness, Your Honor.

27 BY MR. CARTER: Yes, sir.

28 CROSS-EXAMINATION BY MR. CARTER:

29 Q. Sheriff Thornburg.

Bill Thornburg - CROSS

1 A. Yes, sir.

2 Q. So you are telling me the good Lord cast a shadow
3 nowhere but down to the side of this car? It's nowhere else
4 in this picture. The good Lord, the Almighty cast a shadow
5 right across here and nowhere else on the car?

6 A. I don't know whether the good Lord cast it or not,
7 but it's a shadow.

8 Q. Don't we see -- isn't it a fact that we see one
9 color here?

10 A. I see it. Yes, sir.

11 Q. And does it appear that there is a darker color
12 underneath here?

13 A. It's just a shadow. Yes, sir.

14 Q. So the shadow is from the rear right here; is that
15 correct?

16 A. (No immediate response.)

17 Q. Apparently the shadow is here?

18 A. Yes, sir. It's from the rear all the way up there.

19 BY MR. CARTER: One moment, Your Honor.

20 (Defense Counsel confer.)

21 BY THE BAILIFF: Judge Morgan, the jury wants to
22 know if that picture can be brought around because
23 they can't see it. There is a glare on it, and they
24 can't see--

25 BY THE COURT: --I can't hear you. What?

26 BY THE BAILIFF: The jury wants to know if that
27 picture can be brought around. There is a glare, and
28 they can't see what they are talking about on that
29 picture.

Bill Thornburg - CROSS

1 (Picture on easel was turned a different way.)

2 BY THE COURT: Can you see it now?

3 (Jurors nod their heads.)

4 BY THE COURT: Okay.

5 BY MR. CARTER:

6 Q. Now Sheriff Thornburg, one of the wonderful things
7 about being a police officer and investigating a case is that
8 you want to make a record of what you find. That's why you
9 take photographs; isn't that correct?

10 A. Yes, sir.

11 Q. And as time passes, don't you agree that memories
12 will fade?

13 A. A lot of times they will; yes, sir.

14 Q. So isn't it a good idea to also make a written
15 statement to put in writing what you saw at a particular time
16 in order to avoid relying on memory. Wouldn't you agree with
17 that?

18 A. Possibility.

19 Q. Now did you make any writing, any record of what
20 was in that box in Connie's house when you saw it?

21 A. No, sir.

22 Q. And don't you agree that a record, a written record
23 would be more reliable than your eight year memory? A
24 written record that was made on the day that you went there
25 would be more reliable and more trustworthy than your eight
26 year memory?

27 A. Well, I distinctly remember that there was nothing
28 in the box, and there was nothing in the drawer with the box.

29 Q. Okay, you haven't told us that. Did you tell us

Bill Thornburg - CROSS - REDIRECT

1 that before?

2 A. I did.

3 Q. When? You told me that before?

4 A. I did when I was up here before.

5 Q. Maybe you did. I don't remember. When you got the
6 box, obtained the box, you didn't actually go back there and
7 get that box, did you?

8 A. Connie went back there and got it.

9 Q. So you don't know what was in that box when she
10 went back there and got it, do you?

11 A. There wasn't anything in it when she brought it up
12 there, and there was nothing in it when I first seen it
13 earlier.

14 Q. Okay, I can accept that. But when she went back
15 and got it by herself and you wasn't with her, you don't know
16 what was in that box, do you?

17 A. No. It wasn't anything in it when I seen it.

18 Q. Do you understand my question? Do I need to ask
19 you again?

20 A. I do. I understand.

21 BY MR. CARTER: One moment.

22 (Defense Counsel confer.)

23 BY MR. CARTER: We tender, Your Honor.

24 REDIRECT EXAMINATION BY MR. EVANS:

25 Q. All right, Sheriff, if you would, step down,
26 please. I will move this around in front of the jury.

27 A. (Witness steps down in front of the jury box.)

28 Q. Now you can come on around this way, Sheriff.
29 Would you point out -- you have been asked if the only place

Roy Harris - REDIRECT

1 in that picture with shadows. What is this under the car?

2 A. That's a shadow.

3 Q. Dark shadow; right?

4 A. Yes, sir.

5 Q. There is also a glare on part of that car; is that
6 correct?

7 A. It is.

8 Q. But the car itself, is it a solid color?

9 A. It is.

10 Q. And Sheriff, is your memory just as good today as
11 it was then as far as what was in that box?

12 A. Yes, sir.

13 Q. How many days before the box was actually given to
14 you did you find that shoe box in the chest of drawers at
15 Connie Moore's house?

16 A. It was probably a week, two weeks.

17 Q. Was anything in that box?

18 A. There was not.

19 BY MR. EVANS: That's all. Your Honor, we--

20 BY THE COURT: You are through with him?

21 BY MR. EVANS: Through with the witness.

22 BY MR. CARTER: Your Honor--

23 BY THE COURT: -- Is he finally excused?

24 BY MR. EVANS: Yes, sir.

25 BY MR. CARTER: No, Your Honor. We want to call
26 him on our rebuttal.

27 BY THE COURT: Stick around, Sheriff.

28 WITNESS LEAVES THE COURTROOM.

29 BY MR. EVANS: The State finally rests, Your

Bench Conference

1 Honor.

2 STATE OF MISSISSIPPI RESTS ON REBUTTAL.

3 BY MR. CARTER: One minute. Can you give us a
4 minute, Your Honor? (Pause) Your Honor, may we
5 approach for a second?

6 (Ms. Ferraro enters the courtroom with an
7 envelope.)

8 BY MR. CARTER: Your Honor, give me one -- this
9 will answer the question of whether I need to talk to
10 anybody or not. (Mr. Carter gets out some
11 photographs.) We call Mr. Thornburg.

12 BY THE COURT: Well, you need to see me up here
13 first.

14 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
15 JURY AS FOLLOWS:)

16 BY THE COURT: There is normally no surrebuttal
17 in a case, and the only way it would be is if there is
18 new things brought up on rebuttal for you to
19 counteract. And he has just been on the stand subject
20 to cross-examination.

21 BY MR. CARTER: Well, Your Honor, we found some
22 new evidence to show that this car--

23 BY THE COURT: -- When did you find it?

24 BY MR. DE GRUY: The issue just came up when he
25 put him on the stand.

26 BY THE COURT: Sure. He has been on the stand.
27 You could have cross-examined him then.

28 BY MR. CARTER: I did--

29 BY THE COURT: -- When did you get this picture?

Bench Conference

1 BY MR. DE GRUY: They provided it in discovery.

2 BY THE COURT: Well, okay. So how long have you
3 had it?

4 BY MR. DE GRUY: This issue of the stripe did not
5 come up. He didn't testify that this was a shadow.

6 BY MR. CARTER: Until today.

7 BY MR. DE GRUY: Just now.

8 BY MR. EVANS: Your Honor, the issue of the
9 stripe came up in Tupelo. It's in the record in
10 Tupelo--

11 BY MR. CARTER: --We didn't have anything to do
12 with Tupelo.

13 BY MR. EVANS: As a matter of fact--

14 BY THE COURT: --Well, you did have something to
15 do with examining your discovery. You did have
16 something to do with cross-examining the man on
17 rebuttal. You did have something to do with doing it
18 when you are supposed to do it, and this is not new
19 evidence. This is things that have-- this testimony
20 was only on rebuttal to the testimony of the lady that
21 said she saw the vehicle and a description of the
22 picture. The picture has been in evidence. The jury
23 can interpret it, both of those things, and it's just
24 not new evidence.

25 BY MR. CARTER: Your Honor, just for the record,
26 and it may be just my personal opinion, but I want to
27 put it in the record. Mr. Thornburg, we believe, made
28 a statement that is obviously false. We have proof to
29 show that as far as, that we found the proof perhaps a

Bench Conference

1 couple of minutes after Mr. Thornburg left the witness
2 stand. I asked, I informed the Court that we wanted
3 to call Mr. Thornburg on surrebuttal so that I could
4 actually find the photograph. I realize that
5 procedurally--

6 **BY MR. DE GRUY:** We clearly did not release him.

7 **BY MR. CARTER:** I may be barred but in the
8 interest of justice and fairness, I think it would be
9 incumbent on the Court to let me call him back to show
10 him this photograph.

11 (Photograph was shown to the Court.)

12 **BY THE COURT:** Is that the same vehicle?

13 (Mr. Evans looks at the photograph.)

14 **BY MR. EVANS:** It could be. I can't say for
15 sure.

16 **BY THE COURT:** Well, before I allow this, y'all
17 need to go discuss the, both sides go discuss with
18 Mr. Thornburg whether he can identify that picture.
19 If he can't identify it, then there is nothing he can
20 testify to.

21 **BY MR. EVANS:** Your Honor, for the record, this
22 same witness in Tupelo, which I know that is not
23 before the Court, but they are aware of the
24 transcripts. This same witness in Tupelo saw the
25 glare--

26 **BY THE COURT:** I agree, Mr. Evans. But in order
27 to be rather safe than sorry, if he can identify that
28 picture, I will let him testify only to that
29 particular issue about that, but I don't even know

Bench Conference

1 whether he can do that at this time. Do you want to
2 go with them?

3 **BY MR. EVANS:** Yes, sir.

4 **BY THE COURT:** Okay.

5 END BENCH CONFERENCE.

6 (ALL COUNSEL AND THE DEFENDANT LEAVE THE COURTROOM.

7 UPON THEIR RETURN TO THE COURTROOM, THERE WAS THE FOLLOWING

8 FURTHER BENCH CONFERENCE OUT OF THE HEARING OF THE JURY:)

9 **BY MR. EVANS:** They want to make a record of the
10 fact that the Sheriff says he can't say for sure if
11 that's the same car or not.

12 **BY THE COURT:** Okay, well, if he can't, then the
13 picture is not relevant at all because we don't even
14 know whose car it is. It has never been identified by
15 anybody. Okay, make whatever record you would like.

16 **BY MR. DE GRUY:** I had to step closer so you can
17 hear me.

18 **BY THE COURT:** Let the record reflect the Sheriff
19 is standing before the bench.

20 **BY MR. DE GRUY:** Your Honor, do you want me to
21 mark this for identification?

22 **BY THE COURT:** Yeah.

23 (PHOTOGRAPH OF A CAR WAS MARKED AS DEFENDANT'S
24 EXHIBIT D-5 FOR IDENTIFICATION.)

25 EXAMINATION OF BILL THORNBURG BY MR. DE GRUY: (AT THE BENCH)

26 Q. I'm showing you a Polaroid of a car that has been
27 marked as D-5 for identification. Is that the same car you
28 testified to, Doyle Simpson's car?

29 A. There is a lot of shadow on it. It's a car that

Bench Conference

1 looks like his. Whether it's the same color or not, I --
2 there is so much shadow on it you can't tell.

3 **BY THE COURT:** Okay. The Court rules that this
4 picture has just now been produced. It has not been
5 identified by anybody as to whose car it is, what it
6 is. The Sheriff cannot identify it as Doyle Simpson's
7 vehicle. Therefore it's not relevant. It might, it
8 might have been arguable under cross-examination or
9 anything like that, but as to surrebuttal, it is not
10 admissible. And the Court rules that there will be no
11 surrebuttal of this witness.

12 **BY MR. DE GRUY:** And Your Honor, for the record,
13 this picture was provided to us by the District
14 Attorney's Office in discovery.

15 **BY THE COURT:** Right. And they have had
16 discovery for months now and didn't cross-examine him
17 on it when they had the opportunity. The Court finds
18 also that this issue has -- the jury has sufficient
19 information to be able to determine this issue one way
20 or another.

21 **END BENCH CONFERENCE.**

22 **BY MR. CARTER:** We are done.

23 **BOTH SIDES FINALLY REST.**

24 **BY THE COURT:** Ladies and gentlemen, you have now
25 heard all the testimony in this case. I must meet
26 with the lawyers and prepare the instruction on the
27 law that I'm going to give you. I will do that and
28 then bring you back. I will read those instructions
29 to you, and then the lawyers will argue this case to

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1 you. Then I will turn all of this over to you for
2 your decision. You may go to the jury room.

3 JURY LEAVES THE COURTROOM.

4 **BY THE COURT:** Mr. Hill, do you have your new
5 instructions?

6 **BY MR. HILL:** Yes, sir. I have provided Defense
7 a copy of that. I think that's the main one that had
8 to be redone at this point.

9 **BY MR. DE GRUY:** There are a couple of other
10 instructions.

11 (Mr. Hill and Mr. de Gruy both handed documents to
12 the Court.)

13 INSTRUCTION NO. S-1: **BY THE COURT:** Thank you,
14 sir. Okay, have you looked at this new instruction, new S-1?

15 **BY MR. DE GRUY:** Yes, Your Honor. And at this
16 time for the record, a question we had left open yesterday
17 was the circumstantial evidence instruction, and I have
18 researched that last night, and we are going to withdraw our
19 circumstantial evidence instructions without waiving our
20 argument on the unreliability of and inadmissibility of the
21 testimony that took it out of the circumstantial evidence
22 case. I concede that the law does cover that, and it
23 wouldn't be proper.

24 **BY THE COURT:** Okay. The Court does find
25 specifically too first in Moore v. State, 787 So.2d 1282 and
26 Ladner v. State, 584 So.2d 743 that this is a direct evidence
27 case. Okay, let's see. Do you object-- other than that part
28 of it, do you object to anything in the form of it, of S-1?

29 **BY MR. DE GRUY:** Your Honor, we have submitted a,

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as we discussed yesterday, that we were asking for a murder instruction.

BY THE COURT: Simple murder, right?

BY MR. DE GRUY: Simple murder. And we have submitted as D-16A through D in one instruction the capital murder charge and the murder charge. And it's our position that presenting it that way and with, in four separate instructions is the easiest for the jury to follow and understand the instruction. The State's instruction is, in our position, confusing or could confuse and particularly with the murder instruction, that they should be together.

BY THE COURT: Mr. Hill, I believe you told me you had a simple murder instruction?

BY MR. HILL: I do, Your Honor. I didn't know if I should proffer that to the Court, if the Court had made that decision.

BY THE COURT: Well, I have not made that decision. I will hear the argument on it.

BY MR. EVANS: Your Honor, would it be okay if y'all go ahead through the rest of these instructions and give me just a few minutes while y'all are doing that before we argue on that particular instruction?

BY THE COURT: Okay, I have got the Fairchild case here if you want to look at it.

BY MR. EVANS: Yes, sir.

BY THE COURT: I think it is clear as to what it says in relation to this case.

(Case handed to Mr. Evans.)

BY MR. EVANS: Thank you, Judge.

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1 **BY THE COURT:** I'm just going to wait until you
2 do that.

3 **BY MR. EVANS:** Yes, sir.

4 (Mr. Hills hands more instructions to the Court.
5 Mr. Evans left the courtroom with the victims' families, and
6 upon his return, proceedings continued as follows:)

7 **BY THE COURT:** Mr. Evans now having read the
8 Fairchild case, do you have any objection in this particular
9 case to a lesser included instruction?

10 **BY MR. EVANS:** No, sir.

11 **BY THE COURT:** Okay. I am going to grant S-1 as
12 tendered by the State which is the capital murder
13 instruction. I note there is no objection as to the form of
14 that instruction from the Defense. Is that correct? Other
15 than the fact that you would rather have yours?

16 **BY MR. DE GRUY:** That our form, to the extent
17 that we believe our form is the one that should be submitted.

18 **BY THE COURT:** Okay. I do not agree with that.
19 I think it more properly should be submitted in the form that
20 I'm going to give it. And by that, I mean there were several
21 instructions to be read in a row and in sequence which will,
22 I think, better inform the jury as to what their options are.
23 So S-1 is granted as Instruction number 6.

24 INSTRUCTION NO. S-2: **BY THE COURT:** S-2 is--

25 **BY MR. HILL:** -- You may want to look at S-2.
26 I'm not sure I have resubmitted the proper--

27 **BY THE COURT:** Oh, that's right; you did. I'm
28 sorry.

29 **BY MR. HILL:** I believe that's the correct

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version of it.

BY THE COURT: S-2 instructs the jury on the elements of armed robbery. Is there any objection to that?

BY MR. DE GRUY: No, Your Honor.

BY THE COURT: That is given as Instruction number 7.

INSTRUCTION NO. S-6: **BY THE COURT:** S-6 is the first part of the lesser included instruction which tells the jury that they can find the lesser included offense. Any objection to the form there?

BY MR. DE GRUY: No, Your Honor.

BY THE COURT: That is given as Instruction number 8.

INSTRUCTION NO. S-7: **BY THE COURT:** This next one is the lesser included instruction. You have got it entitled as S-1. I'm going to make that S -- let's don't make it S-1. It's not S-1. It's just, let's say it's S-7. Okay?

BY MR. HILL: That's fine, Your Honor. I just failed to make that change on the number.

BY THE COURT: All right. This has four different -- well, it covers all four counts and instructs them on the elements of simple murder. As to the form, do you have any objection to that?

BY MR. DE GRUY: No objection to the form.

BY THE COURT: And that is given as Instruction number 9.

INSTRUCTION NO. S-3: **BY THE COURT:** S-3 is an instruction concerning robbery. Any objection to it? I think yesterday y'all said that you had no objection to S-3.

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1 **BY MR. DE GRUY:** This is the in the presence?

2 **BY THE COURT:** A thing in the presence of.

3 **BY MR. DE GRUY:** No objection.

4 **BY THE COURT:** Okay. That is Instruction number
5 10.

6 INSTRUCTION NO. S-4: **BY THE COURT:** S-4 is the one
7 that directs them that this is only a guilt phase of the
8 trial. Any objection to that?

9 **BY MR. DE GRUY:** No objection.

10 **BY THE COURT:** That is Number 11.

11 INSTRUCTION NO. S-5: **BY THE COURT:** S-5 is
12 deliberate design, defines deliberate design. I believe
13 yesterday you had no objection?

14 **BY MR. DE GRUY:** That's correct.

15 **BY THE COURT:** Is that still correct?

16 **BY MR. DE GRUY:** That's correct.

17 FORM OF THE VERDICT INSTRUCTION: **BY THE COURT:**
18 Okay. This next one I have is a form of the verdict form,
19 and that is not going to be accurate.

20 **BY MR. EVANS:** Right.

21 **BY THE COURT:** We are going to have to redo that
22 that would include that.

23 (To the Court Reporter) We also need our form that we use.
24 Have you got it in the computer? The one where you
25 check.

26 **BY THE COURT REPORTER:** It will have to be
27 changed.

28 **BY THE COURT:** Okay. All right, we will need
29 that. All right, I will withhold that on the form of

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1 the verdict until we prepare a new one.

2 INSTRUCTION NO. D-14: BY THE COURT: Okay, as to
3 D-14, have you got any authority for that instruction?

4 BY MR. DE GRUY: Ferrill v. State, 643 So.2d 501.

5 BY THE COURT: Did it have that instruction in
6 it?

7 BY MR. DE GRUY: I don't have the case with me.
8 I can tell you that it's a clear statement of the law, and I
9 think it says that instruction, an instruction should be
10 given when--

11 BY THE COURT: -- I need to see that case then.

12 BY MR. DE GRUY: Do we have a law library back
13 here?

14 BY THE COURT: Uh-hum. How complete it is is
15 another story now. Okay, I withhold my ruling on
16 D-14.

17 INSTRUCTION NO. D-15: BY THE COURT: Okay, D-15.
18 I mean D-15A B, C, and D are all instructions of lesser
19 included offense of murder. I have already given those
20 instructions. Therefore, I refuse these as being
21 repetitious.

22 INSTRUCTION NO. D-2A: BY THE COURT: Okay, is D-2A
23 is a form of the verdict. I'm going to have one of those.
24 The Court will enter its own instruction as to the form, so
25 it's refused.

26 INSTRUCTIONS D-1A, D-1B, D-1C AND D-1D: BY MR. DE
27 GRUY: The next one is a correction of the count number.

28 BY THE COURT: I am trying to find all my stuff.
29 I have kind of got it scattered. D-1A, D-1B, D-1C and D-1D

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are requests for peremptory instructions on the four different counts. They are refused.

(Ms. Ferraro returns to the courtroom with case law.)

INSTRUCTION NO. D-16A, D-16B, D-16C AND D-16D: BY THE COURT: Okay D-16A, D-16B, D-16C, and D-16D are instructions, essentially the same instruction as S-1, and I refuse them as being repetitious.

CONTINUATION ON INSTRUCTION D-14: BY MR. DE GRUY: Your Honor, this is Ferrill v. State, 643 So.2d 501, a 1994. On page 504 is the jury instruction.

BY THE COURT: All right.

(Pause while the Court reads.)

BY THE COURT: Are y'all familiar with this case, Ferrill v. State?

BY MR. EVANS: No, sir, but as far as this particular instruction, the State would argue against it for several reasons. One, it's telling the jury how to--

BY THE COURT: -- This instruction they have submitted is not proper. But it would look like under Ferrill, they are entitled to an impeachment instruction. And I will grant you one consistent with the instructions in Ferrill if y'all want to redraw one.

BY MR. DE GRUY: Okay. Do you want a verbatim--

BY THE COURT: I think it needs to be -- the Court has approved -- there are two instructions that are substantially the same contained in the Ferrill case, and they have approved both of those instructions. So those are the instructions that I will give, or one of those, and I

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1 don't think there is a dime's worth of difference between
2 them. And so I will give one of them. I tell you what; if
3 you will do this, Mr. de Gruy; if you will come up here and
4 pick out which one of these you want, I will get the Court
5 Reporter to type them for us.

6 (Mr. de Gruy approaches the bench.)

7 **BY THE COURT:** That is the one in this case, and
8 that was the one in the former case, and I don't think there
9 is hardly any, there is very little difference. Have you
10 seen this instruction?

11 **BY MR. EVANS:** No, sir.

12 **BY THE COURT:** You need to look at it too.

13 (Mr. Evans approaches the bench.)

14 **BY MR. EVANS:** I have seen that one, Your Honor.

15 (Pause while everyone reads.)

16 **BY THE COURT:** Do you have any objection to the
17 form of it?

18 **BY MR. EVANS:** No, sir.

19 (FOLLOWING A RECESS FOR THE COURT REPORTER TO GO
20 TYPE THE INSTRUCTION REFERRED TO ABOVE AND THE FORM OF THE
21 VERDICT INSTRUCTION, OBJECTIONS TO INSTRUCTIONS CONTINUED IN
22 OPEN COURT WITH ALL COUNSEL AND THE DEFENDANT PRESENT BUT
23 WITH THE JURY STILL OUT:)

24 INSTRUCTION NO. D-17: **BY THE COURT:** Has everybody
25 looked at the impeachment instruction up here?

26 **BY MR. DE GRUY:** Yes, sir.

27 **BY THE COURT:** Mr. Evans?

28 **BY MR. EVANS:** I don't believe I have, Your
29 Honor. But as long as it's the one that was in the book, I

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1 don't object to it.

2 **BY THE COURT:** I don't have the case in front of
3 me. I'm assuming it is. Linda typed it out of the book.

4 **BY MR. EVANS:** It's fine.

5 **BY THE COURT:** I don't know what "D" number it
6 is, but just so we have some designation, I'm going to make
7 the impeachment instruction D-20. That would be far enough
8 over, wouldn't it?

9 **BY MR. DE GRUY:** Yeah, that will be -- I believe
10 number 17. It would be D-17.

11 **BY THE COURT:** 17, okay. It is given, and it's
12 given as Instruction number 13.

13 INSTRUCTION NO. C-6: **BY THE COURT:** The next one,
14 the form of the verdict will be C-6 and Instruction number
15 14. Y'all have looked at that and approved it; is that
16 correct?

17 **BY MR. DE GRUY:** Yes, Your Honor. As to form.
18 We had submitted our own.

19 **BY THE COURT:** Right.

20 **BY MR. DE GRUY:** And with both of these
21 instructions, we stand by the ones we submitted, but we have
22 no objection to the form of these instructions based on the
23 Court's rulings.

24 **BY THE COURT:** Okay. Did they show you the
25 verdict form that we use?

26 **BY MR. DE GRUY:** Yes.

27 **BY THE COURT:** All right.

28 INSTRUCTION NO. D-3: **BY MR. DE GRUY:** Your Honor,
29 I think we had discussions yesterday about D-3 which was the

Consideration of Instructions - JURY OUT
1 foreperson instruction.

2 BY THE COURT: I generally, I am going to give a
3 foreperson instruction if, in fact, there should be a
4 sentencing phase. I don't think the law requires it at the
5 guilt phase. I have never given it at the guilt phase.

6 INSTRUCTION NO. D-5: BY MR. DE GRUY: And just so
7 the record is clear. I think you also denied D-5 yesterday.
8 Is that--

9 BY THE COURT: What was that?

10 BY MR. DE GRUY: It's a Sandstrom instruction,
11 the essential, proving every essential fact.

12 BY THE COURT: Let me look at it and see.

13 (Pause while the Court reviews several instructions
14 and then goes back over Defense Instructions as follows:)

15 BY THE COURT: Okay, there is a D-2 that y'all
16 had filed and a D-2A. I refused D-2A. Did y'all withdraw
17 D-2?

18 BY MR. DE GRUY: Yes, I believe D-2 was the form
19 of the verdict that didn't include the murder instruction, so
20 we withdrew D-2, and then you denied the form of the verdict
21 that we submitted.

22 BY THE COURT: Okay. D-3 is that foreman
23 instruction which I will give if this case goes further than
24 this. It's refused at this point. D-4 was refused or
25 withdrawn because the Court had already given that
26 instruction.

27 BY MR. DE GRUY: That's correct.

28 BY THE COURT: Withdrawn?

29 BY MR. DE GRUY: Yes, sir. D-4 is withdrawn.

Consideration of Instructions - JURY OUT

1 FURTHER CONSIDERATION OF INSTRUCTION D-5: **BY THE**

2 **COURT:** I refuse D-5 on the basis that it was covered by the
3 Court's instructions.

4 INSTRUCTIONS D-6 AND D-7: **BY THE COURT:** D-6 is a
5 circumstantial instruction.

6 **BY MR. DE GRUY:** D-6 and 7 were withdrawn.

7 INSTRUCTION NO. D-8: **BY THE COURT:** Okay. D-8,
8 the Court -- D-8 is covered by the Court's first instruction.
9 And it may add some things, but the Court's first instruction
10 adequately advises the jury as to what they are to consider
11 in weighing the evidence. Therefore, I refuse it.

12 INSTRUCTION NO. D-9: **BY THE COURT:** D-9,
13 withdrawn? I have given it.

14 **BY MR. DE GRUY:** I had marked that it was denied
15 yesterday but--

16 **BY THE COURT:** Well, you don't have to withdraw
17 it. I have given it in C-1. You can withdraw it, or I will
18 deny it, one or the other, whatever you want.

19 **BY MR. DE GRUY:** You can deny it.

20 **BY THE COURT:** Okay.

21 INSTRUCTION NO. D-10: **BY THE COURT:** I have given
22 an identification instruction. When you couple it with the
23 instructions I have given in C-1 as to how they are to
24 consider the evidence and the credibility of witnesses and
25 things and other instructions, taking the instructions as a
26 whole, D-10 has already been covered by the other Court's
27 instructions, and I refuse it.

28 INSTRUCTION NO. D-11: **BY THE COURT:** What do you
29 say to D-11?

Instructions read to jury

1 **BY MR. HILL:** We looked at that yesterday. That
2 is covered by the Court's Instruction C-1.

3 **BY THE COURT:** Okay. I'm going to refuse it.

4 INSTRUCTION NO. D-12: **BY THE COURT:** Also, D-12 is
5 covered by C-1.

6 INSTRUCTION NO. D-13: **BY THE COURT:** D-13 is a
7 hung jury instruction. I refuse it.

8 **BY THE COURT:** Okay. Are there any defense
9 instructions now that I have not ruled on?

10 **BY MR. DE GRUY:** No, Your Honor. I think that
11 covers it.

12 JURY ENTERS THE COURTROOM.

13 **BY THE COURT:** Ladies and gentlemen, at the
14 outset of this trial, I told you that at the end of
15 the trial I would read to you my instructions on the
16 law, and I'm going to do that right now. These
17 instructions, as you see, are in writing. You will
18 have them to take with you to the jury room for your
19 deliberations after I have read these and the lawyers
20 will argue this case.

21 "You have heard all of the testimony and received the
22 evidence and will hear the arguments of counsel shortly. I
23 will now instruct you as to the rules of law which you will
24 apply to this evidence in reaching your verdict.

25 When you took your place in the jury box, you took an
26 oath that you would follow and apply these rules to the
27 evidence in reaching your verdict in this case. It is,
28 therefore, your duty as jurors to follow the law which I
29 shall now state to you.

Instructions read to jury

1 You are not to be concerned with the wisdom of any
2 rule of law. Regardless of any opinion you may have as to
3 what the law ought to be, it would be a violation of your
4 sworn duty to base your verdict upon any other view of law
5 than that given in these instructions.

6 You are not to single out one instruction alone as
7 stating the law, but you must consider these instructions as
8 a whole.

9 It is your exclusive province to determine the facts
10 in this case and to consider and weigh the evidence for that
11 purpose. The authority thus vested in you is not an
12 arbitrary power, but must be exercised with sincere judgment,
13 sound discretion and in accordance with the rules of law.

14 Both parties have a right to expect that you will
15 conscientiously consider and weigh the evidence and apply the
16 law of the case.

17 It is your duty to determine the facts and to
18 determine them from the evidence produced in open court. You
19 are to apply the law to the facts and in this way decide the
20 case. You should not be influenced by bias, sympathy, or
21 prejudice. Your verdict should be based on the evidence and
22 not upon speculation, guesswork, or conjecture.

23 You are required and expected to use your good common
24 sense and sound honest judgment in considering and weighing
25 the testimony of each witness who has testified in this case.

26 The evidence which you are to consider consists of
27 the testimony and statements of the witnesses and exhibits
28 offered and received. You are also permitted to draw such
29 reasonable inferences from the evidence as seem justified in

Instructions read to jury
light of your own experience.

Arguments, statements, and remarks of counsel are intended to help you understand the evidence and apply the law, but are not evidence. If any argument, statement, or remark has no basis in the evidence, then you should disregard that argument, statement, or remark.

The production of evidence in court is governed by rules of law. From time to time during the trial it has been my duty as judge to rule on the admissibility of evidence. You must not concern yourselves with the reasons for my rulings since they are controlled and governed by the rules of law. You should not infer from my rulings on these motions or objections to the evidence that I have any opinion on the merits favoring one side or the other. You should not speculate as to possible answers to questions which I did not require to be answered. Further, you should not draw any inference from the content of these questions.

You are to disregard all evidence which I excluded from consideration during the course of the trial.

If in stating the law to you, I repeat any rule, direction, or idea; or if I state the same in varying ways, no emphasis is intended, and you must not draw any inference therefrom. The order in which these instructions are given has no significance as to their relative importance.

The law presumes every person charged with the commission of a crime to be innocent. This presumption places upon the State the burden of proving the defendant guilty of every material element of the crime with which the defendant is charged. Before you can return a verdict of

Instructions read to jury

1 guilty, the State must prove to your satisfaction beyond a
2 reasonable doubt that the defendant is guilty. The
3 presumption of innocence attends the defendant throughout the
4 trial and prevails at its close unless overcome by evidence
5 which satisfies the jury of the Defendant's guilt beyond a
6 reasonable doubt. The defendant is not required to prove his
7 or her innocence.

8 The verdict of the jury must represent the
9 considered judgment of each juror. In order to return a
10 verdict, it will be necessary that each juror agree. In
11 other words, all twelve jurors must agree before returning a
12 verdict in this case. It is your sworn duty as jurors to
13 consult with one other and to deliberate in view of reaching
14 an agreement, if you can do so without violence to your
15 individual judgment. Each of you must decide the case for
16 yourself, but do so only after an impartial consideration of
17 the evidence with your fellow jurors. In the course of your
18 deliberations, do not hesitate to re-examine your own views
19 and change your opinion if convinced it is erroneous, but do
20 not surrender your honest convictions as to the weight or
21 effect of evidence solely because of the opinion of your
22 fellow jurors or for the purpose of returning a verdict.

23 Members of the jury, shortly after you were
24 selected, I informed you that you could take notes, and I
25 instructed you as to the appropriate use of any notes that
26 you might take. Most importantly, an individual juror's
27 notes may be used by that juror only and may not be shown to
28 or shared with other jurors. Notes are only a memory aid,
29 and a juror's notes may be used only as an aid to refresh

Instructions read to jury

1 that particular juror's memory and assist that juror in
2 recalling the actual testimony. Each of you must rely on
3 your own independent recollection of the proceedings.
4 Whether you took notes or not, each of you must form and
5 express your own opinion as to the facts of this case. Be
6 aware that during the course of your deliberations there
7 might be the temptation to allow notes to cause certain
8 portions of the evidence to receive undue emphasis and
9 receive attention out of proportion to the entire evidence.
10 But a juror's memory or impression is entitled to no greater
11 weight just because he or she took notes, and you should not
12 be influenced by the notes of other jurors.

13 Thus, during your deliberations, do not assume
14 simply because something appears in your notes that it
15 necessarily took place in court.

16 The burden of proof in this case is on the State to
17 prove the Defendant's guilt beyond a reasonable doubt. The
18 defendant is not required to prove anything in this cause or
19 to testify in his own behalf. You must not hold the facts
20 that the Defendant did not testify in this case against him
21 or as any evidence of guilt.

22 The Court instructs the jury that the law looks
23 with suspicion and distrust on the testimony of an alleged
24 informant and requires the jury to weigh the same with great
25 care and suspicion. You should weigh the testimony from an
26 alleged informant in passing on what weight, if any, you
27 should give this testimony. You should weigh it with great
28 care and caution and look upon it with distrust and
29 suspicion.

Instructions read to jury

1 The Court instructs that in reaching your verdict,
2 you are to consider all of the evidence concerning the entire
3 case and the circumstances surrounding the crime. One of the
4 issues in this case is the identification of Curtis Giovanni
5 Flowers as the perpetrator of the crime. As with each
6 element of the crime charged, the State has the burden of
7 proving identity beyond a reasonable doubt. And before you
8 may convict Curtis Giovanni Flowers, you must be satisfied
9 beyond a reasonable doubt of the accuracy of the
10 identification of Curtis Giovanni Flowers. If after
11 considering all of the evidence concerning the crime and
12 witness identification of Curtis Giovanni Flowers as the
13 person who committed the crime, you are not convinced beyond
14 a reasonable doubt that he is the person who committed the
15 crime, then you must find him not guilty. Identification
16 testimony is an expression of belief or impression by the
17 witness. You must judge its value and reliability from the
18 totality of the circumstances surrounding the crime and the
19 subsequent identification. In appraising the identification
20 testimony of a witness, you should consider the following:

21 Did the witness have an adequate opportunity to
22 observe the offender?

23 Did the witness observe the offender with an
24 adequate degree of attention?

25 Did the witness provide an accurate description of
26 offender of the crime?

27 How certain is the witness of the identification?

28 How much time passed between the crime and the
29 identification?

Instructions read to jury

1 If, after examining all of the testimony and the evidence,
2 you have a reasonable doubt that Curtis Giovanni Flowers was
3 the person who committed the crime, then you must find Curtis
4 Giovanni Flowers not guilty.

5 The Defendant, Curtis Giovanni Flowers, has been
6 charged with four separate indictments, in four separate
7 indictments with the crimes of the capital murders of Bertha
8 Tardy, Robert Golden, Carmen Rigby, and Derrick Stewart.
9 These charges have been consolidated for trial in this case;
10 therefore, all twelve of you must unanimously agree on and
11 return a separate verdict for each of the four charges.

12 If you believe from all the evidence in this case,
13 beyond a reasonable doubt, that the Defendant, Curtis
14 Giovanni Flowers, did on or about July the 16th, 1996, in
15 Montgomery County, Mississippi, willfully, unlawfully,
16 feloniously, either with or without deliberate design, then
17 and there kill and murder Bertha Tardy, a human being,
18 without authority in law, when engaged in the commission of
19 the crime of armed robbery, then if you so believe from all
20 the evidence in this case beyond a reasonable doubt that the
21 Defendant is guilty of the capital murder of Bertha Tardy,
22 then it is your sworn duty to say so by your verdict.

23 If the State has failed to prove any one or more of
24 these elements beyond a reasonable doubt, then you shall find
25 the Defendant not guilty of the capital murder of Bertha
26 Tardy.

27 If you believe from all the evidence in this case,
28 beyond a reasonable doubt, that the Defendant, Curtis
29 Giovanni Flowers, did on or about July 16, 1996, in

Instructions read to jury

1 Montgomery County, Mississippi, willfully, unlawfully,
2 feloniously, either with or without deliberate design, then
3 and there kill and murder Robert Golden, a human being,
4 without authority of law, when engaged in the commission of
5 the crime of armed robbery, then if you believe from all the
6 evidence in this case beyond a reasonable doubt that the
7 Defendant is guilty of the capital murder of Robert Golden,
8 then it is your sworn duty to say so by your verdict.

9 If the State has failed to prove any one or more of
10 these elements beyond a reasonable doubt, then you shall find
11 the Defendant not guilty of the capital murder of Robert
12 Golden.

13 If you believe from all the evidence in this case,
14 beyond a reasonable doubt, that the Defendant, Curtis
15 Giovanni Flowers, did on or about July 16, 1996, in
16 Montgomery County, Mississippi, willfully, unlawfully, and
17 feloniously, either with or without deliberate design, then
18 and there kill and murder Carmen Rigby, a human being,
19 without authority of law when engaged in the commission of
20 the crime of armed robbery, then if you so believe from all
21 the evidence in this case beyond a reasonable doubt that the
22 Defendant is guilty of the capital murder of Carmen Rigby,
23 then it is your sworn duty to say so by your verdict.

24 If the State has failed to prove any one of more or
25 these elements beyond a reasonable doubt, then you shall find
26 the Defendant not guilty of the capital murder of Carmen
27 Rigby.

28 If you believe from all the evidence in this case,
29 beyond a reasonable doubt, that the Defendant, Curtis

Instructions read to jury

1 Giovanni Flowers, did on or about July 16, 1996, in
2 Montgomery County, Mississippi, willfully, unlawfully, and
3 feloniously, either with or without deliberate design, then
4 and there kill and murder Derrick Stewart, a human being,
5 without authority of law when engaged in the commission of
6 the crime of armed robbery, then if you so believe from all
7 the evidence in this case beyond a reasonable doubt that the
8 Defendant is guilty of the capital murder of Derrick Stewart,
9 then it is your sworn duty to say so by your verdict.

10 If the State has failed to prove any one or more of
11 these elements beyond a reasonable doubt, then you shall find
12 the Defendant not guilty of the capital murder of Derrick
13 Stewart.

14 If you believe from all the evidence in this case
15 beyond a reasonable doubt, that the Defendant, Curtis
16 Giovanni Flowers, did on or about July the 16th, 1996, in
17 Montgomery County, Mississippi, willfully, unlawfully and
18 feloniously, with the felonious intent to permanently deprive
19 the owner thereof, take, steal and carry away or attempt to
20 take, steal and carry away the personal property of Bertha
21 Tardy, doing business as Tardy Furniture Store, from the
22 presence and against the will of Bertha Tardy, by violence to
23 her person with a deadly weapon, then the same would
24 constitute armed robbery.

25 The Court instructs the jury that if warranted by
26 the evidence, you may find the Defendant guilty of a crime
27 lesser than capital murder on any one or more of the four
28 charges. However, notwithstanding this right, it is your
29 duty to accept the law as given to you by the Court, and if

Instructions read to jury

1 the facts and law warrant a conviction for the crime of
2 capital murder, then it is your duty to make such finding
3 uninfluenced by your power to find a lesser offense. This
4 provision is not designed to relieve you from the performance
5 of an unpleasant duty. It is included to prevent a failure
6 of justice if the evidence fails to prove the original
7 charge of capital murder on any one or more of the four
8 charges, but does justify a verdict for the lesser crime of
9 murder.

10 If you find that the" defendant has failed-- I
11 meant "that the State has failed to prove any one or more of
12 the essential elements of the crime of capital murder on any
13 or all of the four charges of capital murder, you must find
14 the Defendant not guilty of capital murder on that charge or
15 charges as the case may be. You will then proceed with your
16 deliberations to decide whether the State has proved beyond a
17 reasonable doubt all of the elements of the lesser crime of
18 murder on that charge or charges as the case may be.

19 The crime of murder is distinguished from the crime
20 of capital murder by the failure to prove that the murder or
21 murders, as the case may be, were committed when the
22 defendant was engaged in the crime of armed robbery.

23 If you believe from all the evidence in this case
24 beyond a reasonable doubt, that the Defendant, Curtis
25 Giovanni Flowers, did on or about July the 16th, 1996, in
26 Montgomery County, Mississippi, willfully, unlawfully, and
27 feloniously, with the deliberate design to effect death, then
28 and there kill and murder Bertha Tardy, a human being,
29 without authority of law, then if you so believe from all the

Instructions read to jury

1 evidence in this case beyond a reasonable doubt, that the
2 defendant is guilty of the murder of Bertha Tardy, then it is
3 your sworn duty to say so by your verdict.

4 If the State has failed to prove any one or more of
5 these elements beyond a reasonable doubt, then you shall find
6 the defendant not guilty of the murder of Bertha Tardy.

7 If you believe from all the evidence in this case
8 beyond a reasonable doubt, that the Defendant, Curtis
9 Giovanni Flowers, did on or about July 16, 1996, in
10 Montgomery County, Mississippi, willfully, unlawfully, and
11 feloniously, with deliberate design to effect death, then and
12 there kill and murder Robert Golden, a human being, without
13 authority of law, then if you so believe from all the
14 evidence in this case beyond a reasonable doubt that the
15 defendant is guilty of the murder of Robert Golden, then it
16 is your sworn duty to say so by your verdict.

17 If the State has failed to prove any one or more of
18 these elements beyond a reasonable doubt, then you shall find
19 the defendant not guilty of the murder of Robert Golden.

20 If you believe from all the evidence in this case
21 beyond a reasonable doubt, that the Defendant, Curtis
22 Giovanni Flowers, did on or about July 16, 1996, in
23 Montgomery County, Mississippi, willfully, unlawfully, and
24 feloniously, with deliberate design to effect death, then and
25 there kill and murder Carmen Rigby, a human being, without
26 authority of law, then if you so believe from all the
27 evidence in this case beyond a reasonable doubt that the
28 defendant is guilty of the murder of Carmen Rigby, then it is
29 your sworn duty to say so by your verdict.

Instructions read to jury

1 If the State has failed to prove any one or more of
2 these elements beyond a reasonable doubt, then you shall find
3 the Defendant not guilty of the murder of Carmen Rigby.

4 If you believe from all the evidence in this case
5 beyond a reasonable doubt, that the Defendant, Curtis
6 Giovanni Flowers, did on or about July the 16th, 1996, in
7 Montgomery County, Mississippi, willfully, unlawfully, and
8 feloniously, with deliberate design to effect death, then and
9 there kill and murder Derrick Stewart, a human being, without
10 authority of law, then if you so believe from all the
11 evidence in this case beyond a reasonable doubt that the
12 defendant is guilty of the murder of Derrick Stewart, then it
13 is your sworn duty to say so by your verdict.

14 If the State has failed to prove any one or more of
15 these elements beyond a reasonable doubt, then you shall find
16 the defendant not guilty of the murder of Derrick Stewart.

17 A thing is in the presence of a person, in respect
18 to robbery, which is so within her reach, inspection,
19 observation, or control that he could, if not overcome with
20 violence or prevented by fear, retain his possession of it.

21 This phase of the trial deals only with the
22 question of the guilt or innocence of the Defendant, Curtis
23 Giovanni Flowers. In the event that you find the defendant
24 guilty of capital murder, then you will then and only then,
25 after being further instructed by the Court in the second
26 phase of this trial, consider the appropriate sentence to be
27 imposed.

28 The Court further instructs the jury that
29 deliberate design as used elsewhere in these instructions,

Instructions read to jury

means intent to kill, without authority of law and not being justifiable or legally excusable.

A deliberate design cannot be formed at the very moment of the fatal act; however, the deliberate design need not exist in the mind of the defendant for any definite time, not for hours, days, or even minutes, but if there is deliberate design, and it exists in the mind of the defendant but for an instant before the fatal act, this is sufficient deliberate design to constitute the offense of capital murder.

The testimony of a witness or witnesses may be discredited or impeached by showing that on a prior occasion they have made a statement which is consistent with or contradictory to their testimony in this case. In order to have this effect, the inconsistent or contradictory prior statement must involve a matter which is material to the issues in this case.

The prior statement of the witness or witnesses can be considered by you only for the purpose of determining the weight or believability that you give to the testimony of the witnesses or witnesses that made them. You may not consider the prior statement as proving the guilt or innocence of the defendant.

Your verdict must be plainly marked on the separate form provided by the Court. It need not be signed by you and may be in either of the following forms. If you find the Defendant, Curtis Giovanni Flowers, guilty of the capital murder of Bertha Tardy, then the form of your verdict shall be: 'We, the jury, find the defendant guilty of the capital

Instructions read to jury

murder of Bertha Tardy.'

If you find the Defendant, Curtis Giovanni Flowers, guilty of the lesser included offense of murder of Bertha Tardy, then the form of your verdict shall be: 'We, the jury, find the Defendant guilty of the lesser included offense of murder of Bertha Tardy.'

If you find the Defendant, Curtis Giovanni Flowers, not guilty of the capital murder or the lesser included offense of murder of Bertha Tardy, then the form of your verdict shall be: 'We, the jury, find the Defendant not guilty of either the capital murder or the lesser included offense of murder of Bertha Tardy.'

If you find the Defendant, Curtis Giovanni Flowers, guilty of the capital murder of Robert Golden, then the form of your verdict shall be: 'We, the jury, find the Defendant guilty of the capital murder of Robert Golden.'

If you find the Defendant, Curtis Giovanni Flowers, guilty of the lesser included offense of murder of Robert Golden, then the form of your verdict shall be: 'We, the jury, find the Defendant guilty of the lesser included offense of murder of Robert Golden.'

If you find the Defendant, Curtis Giovanni Flowers, not guilty of the capital murder or the lesser included offense of murder of Robert Golden, then the form of your verdict shall be: 'We, the jury, find the Defendant not guilty of either the capital murder or the lesser included offense of murder of Robert Golden.'

If you find the Defendant, Curtis Giovanni Flowers, guilty of the capital murder of Carmen Rigby, then the form

Instructions read to jury

1 of your verdict shall be: 'We, the jury, find the Defendant
2 guilty of the capital murder of Carmen Rigby.'

3 If you find the Defendant, Curtis Giovanni Flowers,
4 guilty of the lesser included offense of murder of Carmen
5 Rigby, then the form of your verdict shall be: 'We, the
6 jury, find the Defendant guilty of the lesser included
7 offense of murder of Carmen Rigby.'

8 If you find the Defendant, Curtis Giovanni Flowers,
9 not guilty of the capital murder or the lesser included
10 offense of murder of Carmen Rigby, the form of your verdict
11 shall be: 'We, the jury, find the Defendant not guilty of
12 either the capital murder or the lesser included offense of
13 murder of Carmen Rigby.'

14 If you find the Defendant, Curtis Giovanni Flowers,
15 guilty of the capital murder of Derrick Stewart, then the
16 form of your verdict shall be: 'We, the jury, find the
17 Defendant guilty of the capital murder of Derrick Stewart.'

18 If you find the Defendant, Curtis Giovanni Flowers,
19 guilty of the lesser included offense of murder of Derrick
20 Stewart, then the form of your verdict shall be: 'We, the
21 jury, find the Defendant guilty of the lesser included
22 offense of murder of Derrick Stewart.'

23 If you find the Defendant, Curtis Giovanni Flowers,
24 not guilty of either the capital murder or the lesser
25 included offense of murder of Derrick Stewart, the form of
26 your verdict shall be: 'We, the jury, find the Defendant not
27 guilty of either the capital murder or the lesser included
28 offense of murder of Derrick Stewart.'"

29 All of those verdicts are on this verdict form.

Final Argument by Mr. Evans

1 When you have unanimously reached a verdict on each of
2 those counts, then you should check that verdict. At
3 that time then you should knock on the door. The
4 bailiffs will tell me that you have reached a verdict,
5 and I will bring you back into Court to deliver that
6 verdict. Mr. Evans.

7 **BY MR. EVANS:** Thank you, Your Honor.

8 FINAL ARGUMENT BY MR. EVANS:

9 Ladies and gentlemen, several days ago we started
10 this trial. We did the opening statements. In those opening
11 statements I laid out for you a road map of what we expect to
12 prove in this trial in hopes that you would follow it as we
13 went through the trial. I'm going to briefly go back through
14 what we have proven to you and show you that we did, in fact,
15 prove to you the elements that we told you we would.

16 To start with, back in July, July 16, 1996,
17 everything was operating normal in Winona. Tardy Furniture
18 store was open that morning. Bertha Tardy, the owner, was at
19 work. Carmen Rigby, the bookkeeper, was there. Two other
20 young men were there, Robert Golden and Derrick Stewart.
21 They were there waiting on Sam Jones to come show them how to
22 load some furniture because neither one of them had even been
23 there long enough yet to know how they needed to load and
24 haul the furniture. So we have got four people that are
25 minding their own business at work, trying to make a living,
26 and someone comes in and kills them and takes the store's
27 money. And that's what we are here about today.

28 Now before I go into all the details, the Court has
29 told you you have got two options in this case as far as

Final Argument by Mr. Evans

1 guilty. The first is capital murder. The second is just
2 plain murder. It's distinguished by one element, and that is
3 the robbery. If you find that no money was taken from the
4 store, then that could be regular murder. But we have proven
5 clearly to you through Roxanne Ballard that money was, in
6 fact, taken.

7 Y'all saw the picture of the cash drawer. You
8 heard the testimony of Roxanne that there was always money in
9 that drawer. The drawer was always put in the safe and
10 locked up at night. That drawer was pulled out in the
11 morning. Normally it had \$300.00 in it. This particular
12 morning it had \$400.00 in it, and she explained to you how
13 she knew that, because of the receipts that were in there.
14 So there was money taken, and it was a robbery.

15 Now for a robbery, as the Judge has told you in the
16 instructions, what we must prove is that personal property of
17 hers or the store's was taken by violence to her body. It
18 can't be much more violent than being shot in the head.
19 Y'all have seen the pictures. You have heard Sam Jones
20 testify how when he went up there that morning to show these
21 two boys how to load the furniture, he walks in and found
22 this horrible scene. Derrick Stewart was still alive. He
23 was gurgling in his blood. He was trying to survive. The
24 other three were already dead, no doubt about it. Everybody
25 in the store had been shot in the head with a .380 automatic.
26 Robert Golden had been shot twice in the head.

27 You heard the testimony from Dr. Hayne. One of the
28 elements we must prove is how they were killed. There can be
29 no argument how they were killed. All four of these people

Final Argument by Mr. Evans

1 were killed by being shot in the head with a .380 automatic
2 pistol.

3 I told you on opening statements that we would
4 prove to you where that pistol came from, and we did. We
5 proved to you that that pistol came out of Doyle Simpson's,
6 the Defendant's uncle's car. And we proved that to
7 100 percent certainty because you have heard the testimony of
8 the expert. He compared the bullets that came out of the
9 store. He compared the bullets that came out of the post
10 where Doyle had test fired that gun. And we would have never
11 known about the bullets in that post if it hadn't been for
12 Doyle taking the officers out there to the post. He
13 cooperated and took them out there. He showed them where he
14 had fired the gun. They dug the bullets out of the post, and
15 they took those bullets along with the bullets out of the
16 crime scene, the bullets that went through these four
17 victims' heads. Some of them were still in their heads when
18 the autopsies were done. They were removed by Dr. Hayne.
19 The expert David Balash testified that he compared those
20 bullets at the scene to the bullets that were known to be
21 fired from Doyle's gun, and he told you to 100 percent
22 certainty they were fired from the same gun. So we have
23 proved to you what gun was used.

24 Now how does that tie to the Defendant? To start
25 with, we know from the testimony that that gun was in his car
26 that morning, locked in the glove compartment. We know that
27 his nephew knew that gun was in there, and now we know that
28 he was leaning against that car that morning about 7:15, the
29 car that the gun was stolen out of.

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1 Now I want you to remember as I'm going through
2 these things, that in the statement he gave Jack Matthews, he
3 said he was never on the east side of Highway 51, nowhere on
4 the east side of Highway 51 that entire morning. Angelica is
5 on the east side of Highway 51. Where that car was is on the
6 east side of Highway 51. He is leaning against the car at
7 about 7:15 that the gun comes out of. What did she say? She
8 didn't say, I think that was him. She didn't say, I have
9 never seen this person before, but I believe it looked like
10 him. She said she knew him. She knew who he was that day.

11 What else did she say? She really didn't want to
12 get involved is why she didn't give his name that first day
13 because she was scared. But she told y'all that she knew it
14 was him just like she told the officers, just like she
15 pointed him out of the lineup. And when they showed her that
16 lineup, she didn't even have to walk over to the lineup
17 before she even went across the room. She pointed to him and
18 said, That is him right there. That is the person I have
19 known; that is the person that was at the car. I know him.
20 That's him.

21 We go on down. Lee Edward McChristian on Academy
22 Street; he sees him walk by his house a little bit later.
23 You know, all of these places are on the east side of Highway
24 51, and remember, he says he wasn't there. All these folks
25 are just lying on him.

26 I submit to you that because of good police work,
27 we can pinpoint his exact path from leaving his house, go to
28 Angelica, back to his house, and then back to town to Tardy
29 Furniture. I'm going to lay that out for you in a few

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1 minutes, but you have seen it already. You have heard these
2 witnesses like Beneva Henry that have no reason to come in
3 here and lie on him; has known him all of her life; says yes,
4 I saw him walk by my house. He was headed toward town in the
5 same direction of Tardy Furniture. Yet he says he wasn't
6 ever there.

7 His statement is specific. As a matter of fact, he
8 says he didn't even get up until 9:30 that morning in his
9 statement. Now you have heard testimony from a defense
10 witness that oh, yeah, he was at his sister's house about
11 9:15. Look at his statement that he gave Jack Matthews. He
12 says he didn't even get up until 9:30. He says he went to
13 his sister's house at 11 or 12 something, and then he went to
14 the store after 12:00. That witness isn't even consistent
15 with his own statement that he gave.

16 This case was a terrible case because of four
17 people being killed, but it's a case that because of a good
18 law enforcement work, they were able to put it together.
19 Every possible person that they could find that might have
20 seen him was interviewed. And because of people in the
21 community being honest and saying yes, I saw him; some may
22 say, I don't want to be involved, but yes, I saw him. And
23 you heard them come on this stand and testify to that. Not
24 only can we put him at the car that the gun was taken out of
25 and knowing it was in there, we can put him going back to
26 town after he got the gun. Ms. Beneva Henry saw him at her
27 house walking down Campbell Street. Then right on down the
28 street from her house Mary Jeanette Fleming saw him. You
29 heard Mary Jeanette say that when she walked on up the street

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1 after seeing him, Ms. Beneva Henry was still sitting on her
2 porch. And one thing I think she said was very important.
3 You know, everybody laughed; it was funny at the time, but
4 it's very important. She said it didn't matter if he was
5 naked; she knew who he was.

6 I think all of y'all have seen me throughout this
7 whole trial. You could probably say without a doubt that I
8 was here last Friday, but how many of you could say
9 specifically which suit or what clothes I was wearing that
10 Friday? You probably couldn't. I couldn't. I don't even
11 remember myself, but I remember seeing y'all here last
12 Friday. These witnesses went through what they saw. These
13 witnesses told what they knew.

14 Something else that was very important and very
15 good police work. These officers didn't just go in and tramp
16 all over the scene. They go in and they find evidence, and
17 they preserve it. The bloody tennis shoe tracks are very
18 important because they were left in blood. We know that
19 whoever did it did it at the time of the shootings. These
20 tracks are in blood on the floor, and you heard the expert,
21 Joe Andrews, say that those tracks are exactly consistent
22 with having been made by a pair of Fila Grant Hill II, 10 1/2
23 shoes, the same kind of shoes, the same kind of shoe box that
24 was found at the house he was living in.

25 Now his girlfriend wants to come into court and say
26 oh, he didn't wear a size ten and a half. He wore a size 11,
27 and that's exactly why we brought the shoes in that were
28 taken off his feet to show who was telling the truth. Jack
29 Matthews was telling the truth, and Joe Andrews was telling

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1 the truth. Joe Andrews with the lab said he looked at those
2 other shoes; they were 10 1/2's. But she wants you to
3 believe he doesn't wear a 10 1/2; he wears an 11.

4 Something else, and Defense is going to argue oh,
5 it wasn't but one particle. Gunshot residue on his hand is
6 very important, on the back of his right hand. Now one thing
7 else that is very important and the experts, both experts
8 that have testified on that agree; you can say to 100 percent
9 certainty also, nothing in this world resembles gunshot
10 residue. When you have those same characteristics and same
11 shape, it can be nothing else in the world but gunshot
12 residue from a primer of a gun. You have heard the experts
13 testify. If you fire a gun with your right hand, where would
14 you expect to find the gunshot residue? On the back of your
15 right hand. And that's where it was.

16 We are talking about some four hours later. We are
17 lucky that they were still able to find some on his hand
18 because the experts say even if he hadn't washed his hands,
19 just sticking them in his pockets and all, he is going to
20 lose most of it. So we were lucky that we found that, but we
21 did, again by good police work because they, as soon as they
22 got an opportunity, they checked to see if it was on his
23 hands, and it was.

24 Porky Collins. Y'all heard his testimony even
25 though he is now deceased. We were able to read his
26 testimony into the record. That morning he saw the Defendant
27 on Front Street. Now they started saying things like well,
28 you said it looked like him. You said it could be him. I
29 pointed out numerous places in there where he said, That is

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1 the man I saw. We have got him on Front Street walking in
2 the direction of the store. And then to me, another one of
3 the most important witnesses in the whole case is Clemmie
4 Fleming. Not only do we have him walking toward the store on
5 Front Street, where he says he never was, but we have got him
6 running, running wide open at the back of Tardy's heading
7 down the street, running away from the store. We have got
8 him going to the store. We have got him running away from
9 the store.

10 I want to go over just a few things with you.

11 (NOTE: Mr. Evans puts up easel with sketch pad in
12 front of the jury and writes on it.)

13 6:30 to 6:45 in the morning the day of the murders,
14 Elaine Gholston. She sees him sitting out on his porch.
15 Again, remember he says he didn't get up until 9:30. And she
16 can testify that she knew he wore Fila Grant Hills. She had
17 seen him wearing them before. Before that, approximately
18 four something, Patricia Hallmon saw him outside about 4:45.
19 7:15: Katherine Snow. She sees him at Angelica leaning up
20 against the car.

21 7:30 to 8 o'clock, sometime after 7:30: Edward Lee
22 McChristian. He sees him walking away from the direction of
23 Angelica coming down Academy Street. Yet he wasn't on that
24 side of the highway. That is another witness that is lying
25 on him.

26 Approximately 7:30: Patricia Hallmon. She sees him coming
27 back to his house. Yet according to him, he never left
28 there. And she knows that he had on Fila Grant Hills that
29 morning.

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1 8 o'clock. Patricia sees him leave again. That is when he
2 is heading back to the store. This first trip is when he
3 goes to get the gun. He goes back home. Then he leaves his
4 house again and heads back downtown to Tardy's.

5 9:00 to 9:45: That's when Ms. Beneva Henry, she sees him
6 walk by her house. After 9 o'clock right down the street in
7 sight of where each other would have seen him, Mary Jeanette
8 Fleming. She sees him right down the street from Ms. Beneva
9 Henry's house.

10 Somewhere around 9:30: Porky Collins sees him on Front
11 Street walking in the direction of Tardy's.

12 Approximately 10 o'clock: Clemmie Fleming sees him running
13 away from Tardy's.

14 10:30: Chief Hargrove walks in the store and sees the body.
15 There is the time line right there that shows you exactly
16 what happened that day.

17 Ladies and gentlemen, this is a case that you have
18 a couple of options, but if you follow the instructions that
19 the Judge gives you, there can only be one verdict in this
20 case, and that is that the Defendant is guilty of capital
21 murder because he did, in fact, take the money from the
22 store, and that's what makes it a capital murder.

23 Everyone involved in this case did an excellent job
24 of helping preserve the crime scene, the evidence that was
25 there, from Sam Jones, who walked in and found them, Chief
26 Hargrove. Chief Hargrove did an excellent job of protecting
27 the scene until other investigators from the crime lab got
28 there. You heard Melissa Schoene; she was at the time the
29 expert with the state crime lab. She went step by step with

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1 you through what was done to protect the evidence. She is
2 the one that took the photographs of the bloody shoe prints
3 that Joe Andrews was able to match. She, excuse me -- she is
4 the one that recovered the hulls, the projectiles and the
5 other evidence at the scene. And you have also heard and
6 really, the main way you heard it was from the Defendant's
7 own statement. He was let go from Tardy's Furniture. He had
8 hauled some batteries. He had caused them to fall off the
9 truck and was going to have to pay for them. He had worked
10 four days, and other than the \$30.00 advance he had gotten,
11 he wasn't going to get paid for those four days. In his
12 statement, I don't remember the number of times -- you can
13 look back through it -- but if I'm not mistaken, it says
14 something about, about four different times that he had
15 called Ms. Tardy during that time. You can look at the
16 statement. You don't have to go by my memory. He was mad
17 because he wasn't going to get that paycheck.

18 He didn't go back in because she wasn't going to
19 give him that paycheck, and he sat there and stewed over it
20 for several days. He went back down to Tardy's. He shot
21 these four people after he got the gun out of his uncle's
22 vehicle, and he took the money out of the cash register, the
23 money that he thought he was owed. He took that money.

24 Sheriff Thornburg. Sheriff Thornburg was involved
25 in helping to prove what gun was used. He is one of the ones
26 that went and dug the bullet, two bullets out of the post
27 where Doyle had shot it. You heard him testify. You heard
28 Jack Matthews testify about how that was done. That was good
29 police work. That was things that a lot of times would be

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1 overlooked, but they were thinking. They were trying to say
2 well, if the gun has been disposed of, how can we prove what
3 murder weapon was used, and they did. They proved to
4 100 percent certainty what weapon was used without even
5 recovering the weapon, and that is good work. Sheriff
6 Thornburg was also one of the ones involved in recovering the
7 Fila Grant Hill II tennis shoe box. The shoes may be gone,
8 but we have got the box they were in. So we know that those
9 shoes were there, the same kind of shoes that Joe Andrews has
10 said left those bloody shoe prints.

11 The Defense put on the Defendant's girlfriend.
12 Basically, what she said was, I left going to work that
13 morning, and I didn't see him again until that evening. I
14 kept bows in that box. That is what the box was doing there.
15 I kept Christmas bows in it.

16 Y'all heard Sheriff Thornburg, and you are the ones
17 that can determine who has a reason to tell the truth and who
18 has a reason to lie. Sheriff Thornburg said it wasn't
19 nothing in that box when he first saw it, nothing. But they
20 were sharp enough -- as you have heard from Jack and Joe
21 Andrews, again good police work. They started that day going
22 to shoe stores, doing different things to determine. They
23 wanted to know what kind of shoe left this print, what size
24 shoe left this print. Which direction do we need to go from
25 here? And they didn't just do a little and stop. They
26 followed up on it all the way, all the way to the point that
27 the Fila factory sent Joe Andrews the exact same kind of
28 soles that would have been on the shoes in that box. He
29 explained to you how he was able to match it.

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1 You also heard testimony from somebody else. You
2 heard testimony from Odell Hallmon. That is Patricia's
3 brother. You heard how the Defendant asked him to lie, to
4 make up a story to try to discredit Patricia because she was
5 such a good witness against him. But remember what all she
6 could say. She could say he wore Fila Grant Hills. He had
7 them on that day. She saw him at 4:45. She saw him leave
8 his house at 7:30 -- no, saw him come back to his house at
9 7:30; saw him leave the house again at 8 o'clock. It's very
10 obvious why he wanted to discredit her.

11 But what did Odell tell you? He said, yeah, he
12 asked me to make up a statement to help him lie and discredit
13 my sister, but it wasn't true. And I asked him, Did he ever
14 say anything to you about the crime? What did he say? Yeah,
15 he told me he killed the people in the store there. Asked
16 him to lie and admitted to him that he did it.

17 Ladies and gentlemen, as the Judge told you and I
18 told you, the burden of proof is on the State of Mississippi
19 in this case or any case, same burden of proof whether it's a
20 grand larceny or a capital murder. That burden is only
21 beyond a reasonable doubt. That does not mean that you have
22 to have a videotape of the crime scene to convict. That
23 means if we have convinced a reasonable jury beyond a
24 reasonable doubt that he is guilty, he is guilty.

25 I submit to you that we have gone further than
26 that. When you look at the evidence that we have given the
27 jury, you look at all of the witnesses that have put him in
28 these different places -- going to where the gun was, going
29 away from where the gun was, walking toward town, in front of

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1 Tardy's, running away from the crime scene, having the kind
2 of shoes that left the tracks, having gunshot residue on his
3 hand, telling folks, telling Odell Hallmon that he killed the
4 people in the store; ladies and gentlemen, this Defendant is
5 guilty of capital murder. The reason he is guilty is because
6 he went in that store and killed four people on July 16,
7 1996. And we are asking you when you go back in the jury
8 room to deliberate, to return a verdict of guilty of capital
9 murder on all four charges because that's what he is guilty
10 of. Thank you, Your Honor.

11 (Mr. Carter puts large photographs of Doyle
12 Simpson's car on easel in front of the jury.)

13 FINAL ARGUMENT BY MR. CARTER:

14 Good afternoon. The only excellence that went on
15 at that crime scene was done by Melissa Schoene. And the
16 only other excellence that went on this case was done by the
17 Mississippi Crime Lab. Sheriff Thornburg said this is
18 Doyle's car. The car is brown. And the good Lord shines
19 this perfect shadow on this car from right here to right
20 here. And that is not another color, but it is perfect
21 sunlight; a shadow is also underneath this car. It would
22 take an absolute blind person to not see that this car is two
23 colors. You have to lie to say that car is one color.

24 Mr. Evans apparently would believe anything. He
25 believes his witnesses, despite how they testified. He still
26 believes them. I will make every effort to talk slow -- I
27 have a habit of talking fast -- so that you can understand
28 me. The prosecution wants you to believe that it was a clear
29 and sunny day, and the sky is blue, but they can't explain

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1 the clouds or the constant rainfall. The prosecution wants
2 you to believe it was a clear day and it was sunny, and the
3 sky was blue. But you know it can't be a clear day and it
4 can't be sunny if it keeps raining, and you see clouds
5 everywhere. And I'm not gullible enough to believe that, and
6 I don't believe that you are because we know that can't
7 happen.

8 It doesn't matter how many times you repeat a lie.
9 A lie is a lie the first time; it's a lie if you tell it 20
10 times, if you tell it a hundred times. And repeating the
11 same lie over and over does not matter. You are here today
12 facing the awesome responsibility of deciding Mr. Flowers'
13 fate. And I have awesome responsibility of representing him,
14 and it certainly is an awesome responsibility.

15 Mr. Flowers is accused of killing four people, and
16 the death of four people is enough to affect anybody. I told
17 you when I heard about this case, I said I didn't want no
18 part of it. And I'm frankly amazed that I'm the lawyer, but
19 once I got the case and I read the facts, I didn't have any
20 reticence from that time on. It is natural to feel great
21 sympathy and empathy for the victims, victims and their
22 families of the victims because that was a horrific crime
23 scene, no doubt about it. You can't take that away. I won't
24 even waste my time trying because I'm too humane for that.

25 But your job is not to bring relief to the
26 families. That is not your job. Your job is to listen to
27 the evidence and decide guilt or innocence of Mr. Flowers.
28 Your job is to decide whether Mr. Evans proved guilt beyond a
29 reasonable doubt or he didn't prove it. The prosecutors' job

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1 is to do justice, not to just seek a conviction. That is
2 their charge, and while it's not my charge, I make an effort
3 to seek justice also because I believe a trial is a search
4 for the truth. And the truth just doesn't run out. You have
5 to knock it out sometimes. You have to hammer it out and
6 beat it out of people. That's how you get the truth. That's
7 why you have cross-examination because people will come and
8 lie.

9 I would be quite surprised if you didn't feel
10 pressure, a lot of pressure because you have got the great
11 responsibility. But you have to try to make your decision
12 based on the evidence and not on any outside influences.
13 That is your charge. That's what you said you could do. I
14 believe it takes great courage and conviction to sit in
15 judgment on this case because there is so much temptation;
16 there is so much hurt involved in this case. Jury duty is
17 not for the scary and the faint of heart. I have been a
18 lawyer for over 20 years and I have talked to a lot of
19 people, a lot of jurors, and I have learned that people want
20 people just like them to decide their fate.

21 And I have also learned that almost everybody has
22 some fear of people unlike them deciding their fate. And
23 when I speak of unlike, I'm speaking of political parties, a
24 lot of things, races, sexes, social, economic groups, and so
25 on. And as a lawyer, we try to make some effort to
26 accommodate a person, but most of all, we are looking for a
27 fair and impartial jury. That is most of all what I think
28 everybody wants. Only you know whether you can be fair and
29 impartial, and I have no reason to doubt it. I pray, I beg

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1 you to be fair and impartial. I have no reason to doubt it.

2 Nobody has told you this, but you are the most
3 powerful entity in this courtroom right now. You have more
4 power than the Judge, more power than me, and that may shock
5 you. More power than Mr. Evans; that may shock you because
6 you decide what happens to Mr. Flowers. And you don't get a
7 chance to go to law school like I did, like Mr. Evans did,
8 like the Judge did, like Mr. de Gruy and Ms. Ferraro and like
9 Mr. Hill. You show up one day and you get picked, and this
10 great responsibility is thrown upon you, and you have got to
11 handle it.

12 I know you have heard this before, but with great
13 power comes great responsibility because nobody wants to be
14 accused of abusing responsibility, especially a great
15 responsibility on a case like this. So you should be asking
16 yourself, How can I be fair? How can I do what is right?
17 How can I not abuse this responsibility? How can I make sure
18 that I make my decision on the evidence and not on anything
19 else?

20 The prosecution has to prove their case. Mr.
21 Fleming-- Mr. Flowers doesn't have to prove anything. The
22 Judge has told you that that is just the way it is. That is
23 the way our system works. And if Mr. Evans doesn't do his
24 job, you don't have to excuse him. You shouldn't excuse him.
25 You don't have to make excuses for him. Our system depends
26 on ordinary citizens to decide what happens to us; ordinary
27 citizens just like you, so you don't need no law degree. You
28 don't need to be taught how to do this. You just have, need
29 the willingness to do what is right, to follow the

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1 instructions to do your job. That's all we could ask.

2 I realize the death of four people is a hard thing
3 to reconcile. I mean I know it is. When we hear of crime, I
4 want to tell you a little something. Every time I hear of a
5 crime, a horrendous crime, I get mad, and I wish bad things
6 upon the person who did it, and I'm a lawyer and been doing
7 it a long time. And I have to make myself stand back and
8 realize I don't even know the facts. I don't know what
9 happened. I just heard of something. And although this is a
10 horrendous crime, a horrendous crime and I know that it has
11 to affect you greatly, you have got to step back and be fair
12 and be objective and make a decision based on the evidence.
13 You can't just act on emotion.

14 This case is not about me and Mr. Evans. We just
15 happened to be the fortunate or unfortunate people that
16 happen to be here. It's not about the prosecution versus the
17 defense. It's not necessarily about good versus evil. This
18 case is about justice and proof beyond a reasonable doubt or
19 the lack of proof beyond a reasonable doubt.

20 Now let's talk about the facts of the case. Curtis
21 Flowers is charged. The government called, I believe 19
22 people. They called Sam Jones, Chief Johnny Hargrove, Barry
23 Eskridge, Dr. Steven Hayne, Melissa Schoene, Bill Thornburg,
24 David Balash, Katherine Snow, Beneva Henry, Edward
25 McChristian, Doyle Simpson, Elaine Gholston, Mary Jeanette
26 Fleming, Clemmie Fleming, Patricia Hallmon Sullivan, Charles
27 "Porky" Collins, Jack Matthews, Roxanne Ballard, Odell
28 Hallmon, and Joe Andrews and Mr. Keenum; I can't think of his
29 first name. And we called Essa Ruth Campbell, Connie Moore,

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Billy Glover, Latarsha Blissett, Mary Fleming, Sam Jones [sic], and Mike McSparrin.

Before we get there though, I told you from the beginning that they didn't have a single person who could say that they saw Mr. Flowers go in and come out of that store, and they still haven't. After all of this, they still haven't because they don't have. And despite all the good work that Dr. Hayne and Melissa Schoene, Mr. Andrews did, not a single one of those experts can say or performed any work that showed that Curtis Flowers went in that store and committed those murders, not a single one of them.

I told you in the opening statements this case is not about who did it; it's about who could have done it. And all they have shown you is who could have; that he was one of several persons who could have, but they cannot show you that he did, in fact, do it. I told you; I knew they couldn't.

Let's talk about what Mr. Jones said. Mr. Jones came to Tardy's that morning. He was in the front of the store, the side of the store, back behind the store. He drove there. He never saw anybody running, walking, or standing anywhere nearby Tardy's, and he is the person that found the parties. And he drove down Summit, Church, Carrollton; yet he never saw anything. He saw the fingerprints when he went in the second time.

Chief Johnny Hargrove apparently didn't make any notes of what he saw and what he found. He relied on his memory, a dangerous thing because the memory, memory fades. That's just the way it is. No list of people who came in and went out. They certainly never showed me one that he made.

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1 And there is some question about whether he checked any
2 footprints or not. I believe he said he did, but if I'm not
3 mistaken, Mr. Eskridge got up and said he thinks his got
4 checked later by somebody else, and the EMT's were checked
5 later by somebody, not by Mr. Hargrove. But I believe, if
6 I'm not mistaken -- rely on your own judgment, but I believe
7 he said he checked them. If I'm wrong, I apologize.

8 And there was one picture where I asked every one
9 of those police officers, Who are those people standing out
10 front at that tape? Not a single one of them knew who was
11 there because they made no lists. They want you to -- they
12 are going to come in here and want you to believe their
13 memories eight years ago. That's why you write things down.
14 You have got to be a moron to think that you don't have to
15 make notes so that you can memorialize what happened and just
16 rely on your memory. Yet somebody's life is hanging in the
17 balance.

18 Mr. Eskridge said no one checked his shoes at the
19 scene, but maybe later; didn't see anyone check the EMT's
20 shoes. In fact, he walked around and apparently helped
21 Mr. Hargrove look around, which I think is a noble thing to
22 do. I mean if you are courageous enough to do that
23 considering, you know, the crime scene.

24 Dr. Hayne came here and explained to you how these
25 people died. I mean I know that was a touching, hurting
26 thing. It affected me too and -- but you have got to put
27 that in perspective, and that is not to say that I am
28 discounting the murders because I can't do that. I wouldn't
29 be stupid enough and inhumane enough to try to do that.

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1 Melissa Schoene said she lifted fingerprints, I
2 think, from the store and from the car. She said the
3 contents of the safe were neat and orderly, and no evidence
4 nobody went through those. She photographed the keys off of
5 Ms. Rigby's hand, but they were apparently on her hand at
6 some point, which means somebody moved them, kicked them, or
7 did something to move them around in there, which means the
8 crime scene wasn't really protected like they claim it was
9 because had it been protected, the keys would have still been
10 on her hand.

11 And there was never any tape put up in the building
12 to mark off these tracks, but I'm glad they were able to get
13 them. They did a decent job considering that, I would argue.
14 The money was still in Mr. Rigby's purse, still in
15 Mr. Golden's pocket, and I believe still in Ms. Tardy's
16 purse. And Mr. Flowers' check was still left there. They
17 make all this fuss about Mr. Flowers' check. We saw the
18 check sitting right there by the phone. There was never any
19 proof. Did you see anything written on that check where she
20 was going to take that check or deduct that check? I mean
21 there is no real expressed proof that that really, that she
22 was going to actually take it. Of course, she told Mr.
23 Flowers that, but as far as looking at the check and making a
24 big thing out of it, the check-- all the check means is that
25 he worked there at some point, which we know.

26 Mr. Thornburg. No one told him to look out for the
27 footprints. He saw the footprints on his own. He went to
28 Connie's house with Jerry Butler looking for gym shoes. He
29 saw the shoe box, but he didn't get it, and he didn't check

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1 for any clothes or search the house or anything even though
2 this man was a suspect apparently, but that is still
3 excellent police work according to Mr. Evans. Didn't look
4 for the gun or anything else; went back a second time but
5 didn't even go in and get the box. The lady went and got the
6 box and came and brought it to him.

7 And they said they knew kind of early on that it
8 was Grant Hill Fila shoes. If they knew it was Grant Hill
9 Fila shoes that left that print, why didn't they get the box
10 earlier? They probably didn't know. He saw Emmett Simpson
11 running. He said Emmett was perspiring. Doyle lied to him
12 about where he got the gun from.

13 We had David Balash. David Balash said, he
14 explained to you how you can get gunshot residue. And he
15 also said you can get it a lot of ways other than shooting a
16 gun. As a matter of fact, I believe he said, if I'm not
17 mistaken -- rely on your own memory -- that he wouldn't
18 conclude of any person that has fired a weapon unless he sees
19 more than 100 particles, not just one like Mr. Andrews found.
20 He also said that gunshot residue can easily be transferred
21 from shaking hands, people with ink pens and various other
22 things that has gunshot residue on it. And he said there is
23 no test that can show that a person absolutely fired a gun.

24 Katherine Snow claimed she was afraid to get
25 involved. Afraid of what? I asked her. She couldn't tell
26 even tell us. She was just afraid, and she never told
27 anybody that before as far as I know. But all of a sudden
28 she is afraid when she is up there, when she is being cross-
29 examined. Admitted that she knew Curtis before this and saw

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1 Curtis out there. She talked to the police three times, I
2 believe, before she told the police that she saw Curtis out
3 there. By the time she talked to the police and told them
4 about Curtis, the reward was available. She admitted that.
5 Said she saw a person that was 5'3" to 5'5" with a white
6 shirt; didn't notice shoes or pants. She didn't tell Doyle
7 she saw Curtis either. She just gave a description.

8 Then we have got Ms. Henry. Ms. Henry came here
9 and she said she saw Mr. Flowers. I don't doubt that she
10 might have seen Mr. Flowers at some point; I really don't,
11 because people -- she admits that she had seen him many times
12 walking. She said he had on white shorts on that occasion,
13 and he was walking on Campbell. Maybe that happened at some
14 point, but she didn't know where he went. She couldn't say
15 he went to Tardy's. They said he was walking normally,
16 didn't see anything abnormal about him.

17 Mr. McChristian came in, Edward McChristian. He
18 said he saw Curtis walking on South Academy. He couldn't say
19 anything about the clothing; said it was common for people to
20 walk that way all the time. He saw Curtis between 7:30 and
21 8:00, right around the same time that Katherine Snow saw him,
22 so he was doing a lot of moving around, or either he was at
23 two places at one time.

24 Doyle Simpson put the gun in his glove box the
25 night before the murders. He told us that and told us that
26 he never told Curtis he put the gun in there. Yet Mr. Evans
27 said Curtis knew the gun was in there. It is all right for
28 Mr. Evans to say because he didn't need facts to say those
29 kind of things. He just wants to say that and hope that you

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1 will believe it. He said he went to his car about 9:15 to
2 get his breakfast, I believe, went back around 10:25, I
3 believe, to let his windows down. He didn't notice the gun
4 missing until the third time. He was going to pick up
5 lunches, I believe. He admitted that there was about a 45
6 minute period of time when he wasn't at work. He was
7 unaccounted for from my perspective. He lied about where he
8 purchased the gun; called his brother and tried to get his
9 brother to lie for him. Katherine Snow told him that the
10 person she saw, I think it was short, heavy, had a hat on
11 with white shirt, but gave no name. And she saw the person
12 around 7:15, I believe.

13 And Doyle couldn't help, he couldn't explain how
14 lying about the gun was supposed to help Curtis. I mean I
15 don't understand that, and I can understand why it might help
16 him because he claimed he was being harassed. But I don't
17 see how it matters whether you got the gun from your brother
18 or you got it from anybody else. I mean the reason he lied
19 about that, I just don't understand. And he didn't
20 sufficiently explain it to me.

21 Okay, we had Elaine Gholston who came in, said she
22 saw Curtis wearing Grant Hill Filas, but I asked her another
23 question about what she told somebody else. She said it was
24 months and months before the killings; couldn't remember
25 anything else he had on when she saw him with these tennis
26 shoes on; had known him for about seven years and couldn't
27 remember any other type of shoes that he had on, so I guess
28 he had them for seven years, all he wore. But she only saw
29 them one time. Couldn't remember what they specifically

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1 looked like or how he wore them. And she said she never saw
2 Patricia Hallmon walking early in the morning.

3 Then we had Mary Jeanette Fleming. I don't know
4 what to say about her except I know you remember her. And I
5 do too and I will never forget her probably. But she gave
6 one description in court about what she said he had on, but
7 if you take the evidence back in the room with you, you are
8 going to find out that she gave a different description when
9 the police talked to her. I tried to get her to admit it,
10 but she wouldn't do it. The statement is in evidence. Read
11 it and you will see where she made two different statements
12 about what he had on.

13 Then we had Clemmie Fleming, who said she hired
14 Mr. Harris to take her to Tardy's. She said they went there,
15 and they sat out front. And although she had a bill to pay,
16 she was too sick to go in and pay it, but she didn't go to
17 the doctor. She went over to her sister's house and didn't
18 tell her sister she was sick. And she owed for furniture at
19 Tardy's which she has never paid to this day. Tardy's no
20 longer calls her or go to ask her for the money. The debt
21 was forgiven, just like Latarsha Blissett said because she
22 testified in a helpful fashion.

23 And she said Curtis was on the left side of the
24 vehicle. She had to look across Mr. Harris to see him, I
25 believe. And he drove on and this person, Mr. Flowers was
26 running so fast that apparently he got to 51 before they
27 could drive to 51.

28 Patricia Hallmon. She saw Curtis on the porch with
29 blue shorts, smoking a cigarette around 4:45. She saw him

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1 again about 7:30 running from over the hill with black nylon
2 pants that zip up; stayed in the house 20 minutes; left again
3 with the same attire on, but didn't see him return; never saw
4 a weapon or any blood or any evidence of any crime. And
5 apparently, she saw Curtis right around the same time that,
6 or near the same time that Mr. McChristian saw him.

7 Then we had Charles "Porky" Collins, whose
8 testimony you heard read. It was long, and hopefully, you
9 were able to listen to it and it didn't unnecessarily
10 distract you. I realize it is probably not as exciting as
11 having a witness testify, hearing us read something. He said
12 he saw two men in front of Tardy's, said they were medium
13 skin. That's the first thing he said. He said he only got a
14 brief or a split second look at one of the men. He didn't
15 see the other one's face, and when he was first showed a
16 lineup, he picked Doyle Simpson out. Later on, after the
17 good doctor, Mr. Johnson, finished with him, he picked out
18 Curtis Flowers.

19 Now if you remember well, Mr. Collins admitted or
20 he was shown through cross-examination that he had a bad
21 memory, and his perception might have been skewed. He said
22 he saw these two men making hand gestures, thought they were
23 fixing to fight, couldn't identify any clothing or other
24 definite details of the people.

25 Then we had Mr. Jack Matthews, who relied on his
26 great memory too, because that's all you need apparently. He
27 failed to photograph several things. He said he saw the keys
28 on Ms. Rigby's hand. He interviewed Mary Jeanette Fleming.
29 He pointed out the inconsistency in Curtis Flowers'

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1 statement. Curtis gave him two statements. The first time
2 he came he gave them one, according to Mr. Matthews. The
3 second time he saw him he gave him another. Curtis Flowers
4 probably didn't know he was a suspect the first time the
5 police called him. But when they called him back again, I
6 think he knew he was a suspect. Any young man would have
7 been tempted, especially if they started telling you when a
8 crime occurred and what happened, to try to curtail or change
9 your testimony to make it fit whatever they are talking about
10 because he didn't want to be charged. That is just a fact.
11 They can put whatever spin they want to put on it. I can't
12 stop them; I won't even try. But if Mr. Flowers killed the
13 people, then he know what time he killed them. He could have
14 told them, give them the right information the first time.
15 He wouldn't have had to change it because if he had been
16 there, he would have known when it occurred.

17 And Mr. Matthews also admitted that Doyle lied to
18 him; admitted that they never found the tennis shoes; never
19 found the gun; never found the clothing. And I don't have
20 anything bad to say about them not finding this, those items
21 because I believe if they could have found them, they would
22 have, and they tried probably. But he couldn't identify some
23 of the people at the scene also because he was relying on his
24 memory instead of making notes like he should have been
25 doing.

26 And ladies and gentlemen, you had Odell Hallmon to
27 come here, the snitch, the informant, and Mr. Evans believes
28 him too although he knows this man has testified and given
29 information differently before; although he knows Odell had

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1 written a letter to Mr. Flowers' mother apologizing to her
2 for lying, for getting his sister to lie; although he knows
3 Mr. Flowers [sic] has denied on two tapes that Curtis Flowers
4 told him that he killed these people. But Mr. Evans put him
5 up here anyway. He doesn't care. That is not him that is on
6 trial. But you notice Odell didn't provide any detail as to
7 when, where, how or why those murders occurred that Mr.
8 Flowers supposedly told him about.

9 And the Judge gave you a cautionary instruction
10 about how to view Mr. Hallmon's testimony because the man is
11 a snitch. He will do anything for some kind of favor, and I
12 do mean anything. And don't forget where he was living,
13 where he lives now.

14 Now Mr. Joe Andrews, the shoe print guy, did good
15 work from what I could see, and he said that that shoe print
16 was left. He proved scientifically that that print that was
17 left there was done by a Fila that was either 10, 11, or a
18 10 1/2. But even he doesn't know who committed those
19 murders, and he absolutely cannot say Mr. Flowers did it. He
20 admitted that.

21 And he found this one particle of gunshot residue,
22 the smallest amount that the microscope will pick up
23 apparently and they can still say that it's gunshot residue.
24 But even he admits you can get, gunshot residue is easily
25 transferred, and you can get it almost any kind of way. And
26 he said that you can never say absolutely a person fired a
27 gun. Now he sent the shoebox on for fingerprints to be taken
28 of it.

29 Then we had Ms. Campbell to come in here, who is

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1 Doyle Simpson's sister, who had this car sitting at her house
2 more times than she can count, who told you what color the
3 car is, a car that you can see with your own eyes what color
4 it is. And she said she saw her brother driving his car
5 somewhere between 9:00 and 10:00. She was able to see that.
6 And we had Connie Moore who came in and said she bought her
7 son some Fila Grant Hill shoes. In fact, she said she bought
8 two pair. And Mr. Evans couldn't bring anybody here and
9 controvert her testimony, so he tried to talk to her in a
10 condescending manner, tried to make her look like a liar
11 without any proof. She said she had three sons. She had a
12 son Marcus who had left to live with his daddy; had another
13 son named Lemarcus who was living there, and they claimed
14 they checked his shoe and it was size seven. Mr. Evans is
15 going to stand up here and try to make you think that
16 Lemarcus was Marcus. They are two different people.

17 And we had Billy Glover to come in here. Billy
18 Glover said he saw Mr. Flowers because it rained that morning
19 and they know he wasn't going to be able to work because they
20 worked outside, so he went over to Priscilla's house, and
21 Mr. Flowers came by there about 9:15. They talked about 15
22 or 20 minutes.

23 We had Latarsha Blissett to come here. The child
24 was in high school, and Mr. Johnson, the great Mr. Johnson,
25 John Johnson went and got her, picked her up, didn't even
26 tell her parents, her mom and dad; put her in a car and took
27 her to Greenville and interviewing this child and asking her
28 what \$30,000 can do. That will get you a mobile home. That
29 is low down. And Clemmie also told her that she lied and

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1 that she would tell the truth and that she told just to get
2 her furniture paid for.

3 Now we have Mary Ella Fleming, who came here and
4 said her sister came to her house, and her sister didn't say
5 anything about being down at Tardy's or seeing anything
6 before she got in the car and took her sister back down
7 there, and they realized that something had happened down
8 there. Her own sister.

9 And we had Mr. Roy Harris to come in, a man that
10 doesn't hear good and a man that is illiterate, I hate to
11 say, said he couldn't read. And he talked to Mr. Johnson; he
12 talked to him twice. He talked to Mr. Johnson the first
13 time; Mr. Johnson did not tape the statement, and he did not
14 write it out because he didn't want to hear what he had to
15 say the first time. But he called him back later after he
16 had talked to Clemmie Fleming, and he realized what Clemmie
17 Fleming said. Then he goes and get Mr. Harris back in there
18 and make Mr. Harris say what Clemmie Fleming said. That's
19 what he did. That is what I know he did. I'm sorry I
20 couldn't be there so I could prove it any better, but I know
21 that is what happened.

22 And out of all the statements Mr. Evans pulled up
23 and said you said this on this day, and you said this on that
24 day, he never wanted to talk about that first statement that
25 Mr. Harris gave though because he knows Mr. Harris told
26 Johnson that he went down there twice. The first time he was
27 by himself, and that's when he saw a guy running, and he gave
28 a description of the guy he running, he saw running, a light
29 skinned guy. That is oldest trick in the world. If you are

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1 telling me something I don't want to hear, I'm not going to
2 write it down. I'm not going to take it, but when I get you
3 to say what I want you to say, I'm going to tape it because I
4 want some record of it. And you don't have to believe what
5 I'm saying, but I know I'm right, and I know that is what
6 happened. Use your own judgment; you can ignore me with
7 respect to that because that is just my opinion.

8 Who can you trust if you can't trust the police, if
9 the police would lie? The police has a lot of power, and
10 Mr. Evans has a lot of power. I mean they can go and flash
11 that badge and make a person come out of the house and talk
12 to them. They can make a person go down to the precinct and
13 talk to them whether you want to go or not. I can't do that
14 as a defense attorney. But they can do it, and they should
15 not abuse that power.

16 And then we had Larry Keenum, the person that is
17 supposed to account for Doyle Simpson's whereabouts. Doyle
18 Simpson was a possible suspect. They never ruled Doyle
19 Simpson out. You know how they rule him out? They rule him
20 out on one of his co-workers, a guy named Mr. Keenum. They
21 didn't even get a statement from Mr. Keenum. They have
22 nothing in writing, nothing on tape, nothing to prove that
23 this man was actually there. Then they are going to bring
24 him here and let him testify from his memory that he was
25 there, that he remembered. What kind of alibi is that? You
26 can't even prove it. Anybody can come in and lie and say
27 that. And they know it is wrong.

28 And we had Mike McSparrin to come here and say he
29 tested the box and various other things, and he found no

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scientific evidence to connect Mr. Flowers to this crime.

Ladies and gentlemen, the people either saw Mr. Flowers on different days, or they are lying to get money. I can't be real sure what it is. I am sure some of them are lying to get money, to get advantages. I told you in the beginning that you would find a shotty and incompetent investigation to some degree, and you would find witness intimidation, and I believe the facts will bear every single one of those out. And I also told you that this case was going to be about who could have done it and not who did it, and I believe the facts have beared that out too.

If they saw Mr. Flowers on the same day, why do we have so many different clothing descriptions of what he had on? And we know Mr. Flowers didn't likely outrun that truck. I don't really know why Mr. Flowers changed his story. As a lawyer, I don't get a chance to see what happens. All I do is the best I can to try to bring out the truth during the trial. That's all I can do, and try to put a story together based on what happened. I would never stand before you and tell you absolutely that I know what happened because I don't know. I am unlike Mr. Evans. Mr. Evans can do that, but Mr. Evans is not there either. He doesn't see it either. I don't believe that the prosecution has proved their case by trustworthy and reliable evidence. I just can't see that.

Now Mr. Evans gets a chance to come behind me, and I don't care what I say to you, he is going to come up behind me, and he is going to say something different. And he is going to try to make it look like I can't possibly know what I'm talking about, but I have made my best effort to be

Final Arguments by Mr. Carter - by Mr. de Gruy

1 honest and be clear to you. It is important that a police
2 investigation be objective, that it be based on trustworthy
3 and reliable evidence. Otherwise the possibility of error is
4 so great, and with this kind of case, the punishment is just
5 too great to make mistakes, to cavalierly judge somebody;
6 it's too great to not care.

7 You have been forced to rely to a large degree on
8 the memories of people rather than written proof that was
9 collected and made way back around the time it occurred.
10 That is not your fault, and it's not my fault either. I
11 don't know if I have ever heard anybody say they checked
12 Doyle Simpson's shoes or Emmett Simpson's shoes. I don't
13 know if I have heard anybody say they checked Doyle Simpson's
14 house for evidence, or either Emmett Simpson. Maybe they
15 did, but I don't remember hearing anybody. But they zeroed
16 in on Mr. Flowers and said to hell with everybody else more
17 or less. That's the way it looks to me.

18 Mr. Flowers doesn't have to prove anything. That
19 is just the way it is. Mr. Evans has the burden of proof. I
20 thank you, and I believe that you are honest and fair and
21 courageous enough to go back and do the right thing.

22 **BY MR. DE GRUY:** May it please the Court.

23 FINAL ARGUMENT BY MR. DE GRUY:

24 Good afternoon. I know y'all have been here a long
25 time just this afternoon, and you have certainly been here a
26 long time since we got started last week. And I think you
27 will recall when we spoke last week, we were telling you
28 during jury selection that what we were looking for were
29 fair, objective people. I think you will recall, some of you

Final Argument by Mr. de Gruy

1 started on the first day. Some of you started on Wednesday
2 and even on Thursday. From well over 300 people, it came
3 down to you. We trusted you from what you were telling us,
4 and we are about to entrust you in the case, with the case.
5 And I'm going to have to sit down, and I promise you; I'm not
6 going to be here very long. But I think you can understand
7 why I'm a little reluctant to just sit down leaving something
8 unsaid.

9 I know that y'all have been paying attention, and
10 we truly appreciate that. And I have noticed the note
11 taking, and I know you are interested in this case and
12 interested in the facts. And we know and we trust that you
13 are going to go back into the jury room and carefully do your
14 best to remember this evidence. And you also told us during
15 the jury selection process, and it's just as important, that
16 you would follow the law that was given to you by the Judge.
17 And I'm going to just tell you; I'm not going to read back
18 through it. And I noticed y'all were paying attention when
19 he read it. And you know that you get to take it back with
20 you, and so I am asking you to read through the law
21 carefully.

22 I would just like to take just a couple of moments
23 to go through some of these instructions that you will have
24 with you and relate them to the facts that we heard. And to
25 start with, jury instruction number 1. It's a lengthy
26 instruction. It is almost three pages long, and it basically
27 goes back through everything we talked about for four days of
28 jury selection - what we asked if you could do and what you
29 assured us you could. It comes down to the final paragraph

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1 that is, I think what explains to you that awesome
2 responsibility that Mr. Carter was talking about.

3 The ultimate decision you make in this case is your
4 decision, each one of you. You talk among each other. You
5 discuss; I have no doubt you will argue. But ultimately,
6 each one of you owes everyone else the respect that you want
7 in the decision. The final decision that you return into
8 this court is going to be your decision.

9 The instruction number 4: Again, Mr. Carter
10 mentioned this. It's what I refer to as the Odell
11 instruction. The Judge tells you what to do, how you view
12 Odell Hallmon's testimony. It specifically says, "passing on
13 what weight, if any, you should give this testimony, you must
14 weigh it with great care and caution and look at it with
15 distrust and suspicion." Twice when he is being videotaped
16 after he said that he told the District Attorney's Office
17 that there was this confession that he knew no details to;
18 twice he admitted to you while being videotaped, no, he never
19 did that. He never did confess to me.

20 The next instruction deals with identification, and
21 it is a full page line that tells you, the Judge listed to
22 you the things that you can consider because ultimately, you
23 have to decide whether these witnesses who said, I saw Curtis
24 Flowers, actually saw Curtis Flowers, whether they saw him on
25 that day. You must consider the weeks or the months between
26 when they say when they supposedly saw it and when they
27 finally came forward and said anything. You consider the
28 different and changing descriptions from 5'3", 5'4", maybe
29 5'5" up to 5'10", and the descriptions of the clothing was so

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important and the changing descriptions in the clothing.

You won't take this list that Mr. Evans wrote out for you back with you, but something to think about, and I was making notes as he was reading it off. At these different times, it's interesting to also remember how he was dressed according to these witnesses. Ms. Snow at one time said a white shirt and black jeans. She also told Doyle Simpson he was wearing shorts. Mr. McChristian didn't see the clothing. Ms. Gholston said blue or black shorts. Ms. Hallmon was positive, black nylon pants. Ms. Henry saw white shorts. Now Ms. Fleming, and you again can take her earlier statement back with you, black pants, purple jacket, dressy; brown pants, gray jacket. Clemmie Fleming paid attention to everything but the clothing.

And Mr. Collins didn't tell us what the clothing was, and I think unfortunately maybe for all of us, he wasn't here. But he sees him walking across the street at about the same time because it wasn't 9:30. We know it wasn't 9:30 because he was at Wal-Mart at 9:43. He sees a man calmly walking across the street and with another man, and he doesn't -- he identifies both Curtis Flowers, but previously, he had picked someone else out the first time he looked at a lineup. And his, from his testimony he was asked is there anything different about the picture of Curtis Flowers in that lineup than the other people, and he said yeah. It was close-up, real different from the other photos. He knew which picture to pick.

Now some of you when we were going through the jury selection process, we had discussions about the difference

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1 will be the last instruction that the Court gave you. We
2 have had in this case, as we talked about the clothing, a lot
3 of inconsistent statements from the witnesses. They say one
4 thing one time, another thing another time. Some of them
5 like Ms. Fleming were a little reluctant to admit it. The
6 Court instructed you on how you deal with that evidence, how
7 you deal with the evidence that Doyle Simpson lied, that
8 Ms. Snow said she knew Curtis from a singing group, but
9 never, never said it was Curtis I saw until months later.
10 She had talked to him two or three times before she said oh,
11 it was Curtis Flowers.

12 Ms. Gholston and Ms. Hallmon said they had seen
13 Curtis wearing Filas, but only once. They never remembered
14 any other shoe he wore. These Nikes are in evidence. You
15 can look at them and see how worn they are. They never saw
16 him wear those. They only remember one day when he wore like
17 new Filas, couldn't remember any other shoe they ever saw him
18 wear.

19 Mr. Evans just told you Clemmie Fleming is one of
20 his most important witnesses, and we brought in several
21 people, and she herself had to admit she has given several
22 different statements. You consider what she told Latarsha
23 Blissett that she did not see Curtis. You consider what she
24 didn't tell her sister. You know, her sister said, It's a
25 good thing we weren't here this morning. She didn't say a
26 word, never mentioned to her that she had been down there.
27 Of course, we heard today the reason for that is because she
28 wasn't down there. The reason she told Latarsha she didn't
29 see Curtis Flowers is because she didn't see Curtis Flowers.

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1 We are asking you to go back into the jury room,
2 begin your difficult work, talk to each other, hold firm to
3 the beliefs you have, and return a verdict of not guilty on
4 all counts. Thank you.

5 FINAL ARGUMENT BY MR. EVANS:

6 Thank goodness the Judge told y'all that you
7 couldn't rely on what we say on closing statement because my
8 memory is a lot different on a lot of things that happened at
9 trial than what theirs were. Y'all are the ones that base it
10 on your decision. The reason we have juries is that so
11 people can use their common sense and determine what happened
12 in cases. You are not asked to sit up here and do anything
13 other than that. You use your everyday good, common sense;
14 you look at the facts of the case, and you determine what
15 happened. And in this case that is not any close question.
16 You know what happened.

17 Now they want to argue on the lesser included that
18 if you believe that he just went to the store and killed them
19 because he was mad, that is regular murder. Where the
20 difference comes in, and it's the instruction the Court gave,
21 if you believe that it was during the commission of a
22 robbery, then it's capital murder; it's not regular murder.
23 And the Court has instructed you on what robbery is; that "If
24 you believe from all the evidence in this case beyond a
25 reasonable doubt that the Defendant Curtis Giovanni Flowers
26 did, on or about the 16th, July the 16th, 1996, in Montgomery
27 County, Mississippi, willfully, unlawfully, feloniously, and
28 with the felonious intent to permanently deprive the owner
29 thereof, take, steal and carry away or attempt to take, steal

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1 and carry away the personal property of Bertha Tardy, doing
2 business as Tardy Furniture store, from the presence of and
3 against the will of Bertha Tardy by violence to her person
4 with a deadly weapon, the same would constitute robbery."

5 It's that simple. That's the Court's instruction,
6 and if he took the money by force or violence to her, that is
7 robbery. That is what makes it capital robbery, and shooting
8 her in the head, if that is not force to her, I don't know
9 what would be.

10 They want to try to say that they discredited
11 Clemmie by putting Roy Harris on. Y'all saw Roy Harris. It
12 was obvious he wasn't going to answer anything I asked. He
13 tried to act like he couldn't hear me, but he could hear the
14 opposing counsel all the way on the other side of the
15 courtroom. But one thing was very important; he admitted --
16 and I asked him about all four statements he had given. I
17 didn't ask about one or two. He admitted that he said after
18 they went around from Tardy Furniture Company, that Clemmie
19 said, "There goes Curtis Flowers." That is their own
20 witness.

21 Now they want to come up here and attack everybody
22 except the Defendant. You take their version of it, every
23 law enforcement officer in this case is a bunch of lying
24 morons. That's what they said. I tell you that these
25 officers did an excellent job. They followed the proper
26 procedure, and if it wasn't for them following the proper
27 procedure, we wouldn't know who killed all four people there.
28 But they did, and they did a good job of it.

29 They want to talk about prints. Prints aren't

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1 important in this case, and one reason they are not, we have
2 got a public place; we know he was employed there. We know
3 his prints would have been in the store. They found a few
4 prints in different places. It was never said where the
5 prints came from. It wasn't said they came from behind the
6 counter. It was said they were prints recovered from the
7 store. They weren't from the door area, but even if we had
8 14 of his prints in there, that wouldn't mean anything
9 because he was an employee of the store. So that is no
10 evidence one way or the other.

11 Odell Hallmon. They want to attack Odell, and the
12 instructions given don't necessarily apply to one witness.
13 They apply to the law. In the case of Odell, you have got to
14 look at the circumstances. He told you that the Defendant
15 had asked him to lie, make up a story on his own sister. So
16 he started out a defense witness. He didn't start out on
17 something we did. He started out trying to make one of our
18 key witnesses out to look like a liar because this Defendant
19 asked him to, to try to save his own neck. And when did he
20 tell me? He didn't tell me while he was in jail wanting a
21 favor. He talked to his mother about it. He came and called
22 me after he got out of jail at a time he had no charges on
23 him and said Curtis Flowers asked me to lie.

24 **BY MR. CARTER:** Your Honor, I object to that.

25 There is no proof of that.

26 **BY MR. EVANS:** It's in the record.

27 **BY THE COURT:** Overruled.

28 **BY MR. EVANS:**

29 Curtis Flowers asked me to lie for him and make up

Final Argument by Mr. Evans

1 this statement, but it wasn't true, and he admitted to me
2 that he killed the people at Tardy Furniture at a time that
3 he didn't have anything he wanted from me. He wasn't in any
4 trouble.

5 Jack Matthews testified that they followed up on
6 proper procedure and were able to eliminate Doyle Simpson and
7 Emmett Simpson as suspects in this case. They didn't just
8 point in one direction. They checked everybody and
9 everything that they could check on, and everything pointed
10 back to Curtis.

11 Now they even want to argue that we can't prove
12 that she was withholding his check, and that is in his own
13 statement. Y'all have got his statement. It's in evidence.
14 Y'all will have it back there if you don't remember what is
15 in there. But it specifically says in there; it says: What
16 time did you go to your girlfriend's house? About 11, 12
17 something. And you indicated you went to the store. What
18 time did you go to the store? I imagine 12:30 or 12:45.

19 Now they say he wouldn't have done that if he had
20 known he was a suspect. I submit he would have done exactly
21 that. He wanted them to think that he was at home where they
22 couldn't try to prove that he was lying because if he had
23 said, I was at my sister's house at 9:15 while they had him
24 at the police station, you know what they would have been
25 doing? They would have sent somebody over there to the
26 sister's house to find out, and they would have known he
27 wasn't. That's why he said he was at home instead of trying
28 to say he was over at his sister's house because he didn't
29 have time to get somebody else to lie for him.

Final Argument by Mr. Evans

1 Y'all heard, even though it was long, y'all heard
2 Porky's testimony. They are trying to say he picked out
3 Doyle. He never anywhere in there said Doyle Simpson was in
4 front of Tardy Furniture. He said the person that I saw was
5 about this complexion. Something else. He said he is also
6 about the complexion of Chief Johnny Hargrove. And then when
7 he saw the other photo lineup, he said, That is him. That is
8 him.

9 Ladies and gentlemen, these officers have no reason
10 to lie to you. Randy Keenum has no reason to lie to you.
11 None of these people have any reason to lie to you. They are
12 telling you what happened.

13 They are showing you -- and this is not an exhibit.
14 Y'all won't be able to take that back. I used it just to
15 explain to you what the time line was. This helps show that
16 nothing in his statement is believable. This shows all of
17 the places where he was seen. It shows all of the people in
18 the community that were honest enough to say yeah, it was
19 him. Several of them have told you, I didn't want to be
20 involved. Clemmie Fleming, what did she tell you? How did
21 she get up here? Y'all remember what she said? She told a
22 friend that she saw Curtis Flowers running from the store,
23 and that friend called the officers and said, I want you to
24 go talk to her. She wasn't going to tell it because she was
25 scared, and she didn't want to get involved. But she told a
26 friend right after it happened, and that friend was the one
27 that got her testimony in.

28 Doyle didn't want to get his nephew in trouble.
29 You heard him say that. He also said, and I think this is

Final Argument by Mr. Evans

1 important, that he already knew that Doyle had been
2 identified at the time that he tried to put the gun as coming
3 from somewhere else. He really didn't want to put that gun
4 that committed the murders in his nephew's hand, but after
5 they pinned him down on it, not only did he do that, but he
6 was honest enough to carry them to where he had shot the gun,
7 and they were able to match it, 100 percent sure. He didn't
8 want to have to testify against his nephew, but he did.

9 Ladies and gentlemen, the facts are very clear in
10 this case. This Defendant is guilty of four counts of
11 capital murder. We have shown that to you from the
12 witnesses, from the evidence in the case, and we ask that you
13 go back in the jury room and return a verdict to the Court,
14 We, the jury, find the Defendant guilty of capital murder on
15 all four counts.

16 The Judge is going to send a form back there with
17 you. All you do is check the form, knock on the door and
18 return into court. But one thing I want to emphasize at this
19 point. The penalty has nothing to do with this point. As we
20 told you earlier, you are not even supposed to consider the
21 penalty at this phase. All you are looking at is guilt or
22 innocence. And I ask that you go back in the jury room and
23 return a verdict of guilty of capital murder because that's
24 what he is guilty of.

25 **BY THE COURT:** Ladies and gentlemen, it is now
26 time for you to retire to consider your verdict. When
27 you go back to the jury room, the bailiffs will
28 deliver all these exhibits to you that have been
29 admitted into evidence. As Mr. Evans stated and I

Verdict

1 stated earlier, there is a form attached to these
2 instructions for you to fill out when you have reached
3 that verdict on each count. When you have done so,
4 knock on the door, and the bailiff will bring you back
5 into court to deliver that verdict. And everybody can
6 go and deliberate this verdict except Ms. Blaylock,
7 you are the alternate in this case, and you may stay
8 seated for right now. Everybody else can go to the
9 jury room.

10 JURY RETIRES AT 2:55 PM.

11 (ALL EXHIBITS IN EVIDENCE AND THE INSTRUCTIONS WERE
12 SENT TO THE JURY ROOM. THE ALTERNATE WAS RELEASED BY THE
13 COURT. COURT REMAINED IN RECESS UNTIL THE JURY KNOCKED AT
14 5:25 PM. COURT WAS THEN BROUGHT TO ORDER WITH ALL COUNSEL
15 AND THE DEFENDANT PRESENT FOR THE FOLLOWING:)

16 **BY THE COURT:** Ladies and gentlemen, the bailiffs
17 have informed me that the jury has reached a verdict
18 in this case. Before I bring them in to render that
19 verdict, let me make this announcement. I will not
20 tolerate any disturbance by anybody in this courtroom.
21 If you disturb this courtroom, I will have the Sheriff
22 take you into custody, and I will deal with you at a
23 later date. Do you understand that, Mr. Sheriff?

24 **BY SHERIFF THORNBURG:** Yes, sir.

25 **BY THE COURT:** All right.

26 JURY RETURNS INTO OPEN COURT AT 5:26 PM.

27 **BY THE COURT:** Ladies and gentlemen, have you
28 reached a verdict on each count?

29 **BY JURORS:** We have.

Verdict - Jury Polled

1 **BY THE COURT:** Is it the verdict of all twelve of
2 you?

3 **BY JURORS:** Yes, sir.

4 **BY THE COURT:** Would you hand the verdict to the
5 bailiff, please.

6 (The verdict was handed to the Court and then to
7 the Clerk.)

8 **BY THE COURT:** The Defendant will rise. Read the
9 verdict, Ms. Halfacre, the verdicts.

10 **BY THE CLERK:** "We, the jury, find the Defendant
11 guilty of the Capital Murder of Bertha Tardy."

12 "We, the jury, find the Defendant guilty of the
13 Capital Murder of Robert Golden."

14 "We, the jury, find the Defendant guilty of the
15 Capital Murder of Carmen Rigby."

16 "We, the jury, find the Defendant guilty of the
17 Capital Murder of Derrick Stewart."

18 **BY THE COURT:** Do you want the jury polled?

19 **BY MR. DE GRUY:** Yes, Your Honor.

20 **BY THE COURT:** Ma'am, are these your verdicts?

21 **BY A JUROR:** They are.

22 **BY THE COURT:** How about you, ma'am?

23 **BY A JUROR:** Yes, sir.

24 **BY THE COURT:** You, ma'am?

25 **BY A JUROR:** They are.

26 **BY THE COURT:** You, sir?

27 **BY A JUROR:** Yes, sir.

28 **BY THE COURT:** You, ma'am?

29 **BY A JUROR:** Yes, sir.

Jury Polled

1 BY THE COURT: You, ma'am?

2 BY A JUROR: Yes.

3 BY THE COURT: You, ma'am?

4 BY A JUROR: Yes, sir.

5 BY THE COURT: You, ma'am?

6 BY A JUROR: Yes, sir.

7 BY THE COURT: You, sir?

8 BY A JUROR: Yes, sir.

9 BY THE COURT: You, ma'am?

10 BY A JUROR: Yes, sir.

11 BY THE COURT: You, ma'am?

12 BY A JUROR: Yes, sir.

13 BY THE COURT: You, ma'am?

14 BY A JUROR: Yes, sir.

15 BY THE COURT: I find that the verdict is
16 unanimous. Ladies and gentlemen, I'm going to ask you
17 at this time to return to the jury room for just a
18 minute and let me discuss with the attorneys about the
19 second phase of the trial.

20 JURY LEAVES THE COURTROOM.

21 BY THE COURT: Y'all may be seated. Let me see
22 the lawyers up here.

23 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE
24 AUDIENCE AS FOLLOWS:)

25 BY THE COURT: I don't think y'all are going to
26 object to what I'm going to say at this point in time.
27 It is 5:30 in the afternoon. I don't think we ought
28 to begin the sentencing phase until tomorrow at 9
29 o'clock. Everybody in agreement with that?

Court recessed for the day

1 **BY MR. EVANS:** Yes, sir.

2 **BY THE COURT:** Now I'm going to expect everybody
3 to have their witnesses here at 9 o'clock. Okay?

4 **BY MR. EVANS:** Yes, sir.

5 **BY THE COURT:** Okay. All right.

6 END BENCH CONFERENCE

7 **BY THE COURT:** Ladies and gentlemen, it is 5:30
8 in the afternoon. There will be additional evidence
9 that will be presented in this matter at the
10 sentencing phase. It's too late in the day for us to
11 do that. We are therefore going to continue that
12 phase of the trial until in the morning -- wait just a
13 minute now. I haven't let everybody go. Until 9
14 o'clock in the morning, we will begin the sentencing
15 phase promptly at 9 o'clock. Now you are free to go.
16 TRIAL WAS RECESSED FOR THE DAY ON FEBRUARY 11, 2004 AT
17 5:30 PM.

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2/12/04 Motion - JURY OUT

1 (ON FEBRUARY 12, 2004, COURT WAS OPENED, AND WITH
2 ALL COUNSEL AND THE DEFENDANT PRESENT BUT WITH THE JURY OUT,
3 THERE WAS THE FOLLOWING:)

4 BY THE COURT: Are y'all ready to proceed?

5 BY MR. EVANS: Yes, Your Honor. The one thing we
6 need to take care of before we proceed is whether or
7 not anyone is going to ask for the rule to be invoked
8 on this phase of the trial or whether all the
9 witnesses that are testifying for both sides can be
10 present in the courtroom.

11 BY MR. DE GRUY: We are not requesting the rule
12 be invoked. We think it would be proper for them--

13 BY THE COURT: -- So everybody agrees they can
14 all stay in here?

15 BY MR. EVANS: Yes, sir.

16 BY MR. DE GRUY: Yes, sir. Your Honor, we have a
17 motion to make. I think this -- I guess we can do it.
18 The jury is not in here. Before the State begins
19 calling witnesses, we anticipate that they will call a
20 number of witnesses. We are not sure how many that
21 will be testifying to what the law characterizes as
22 victim character or victim impact evidence. And we
23 object to the introduction of this evidence on several
24 grounds. Under Payne v. Tennessee, the United States
25 Supreme Court said it was admissible if relevant, and
26 that is the due process limitation under our state and
27 federal constitutions. And under our statute, this
28 evidence would not be relevant to anything that the
29 jury could consider. They can only consider in the

2/12/04 Motion - JURY OUT

1 weighing process of making this decision the
2 aggravating circumstances. And none of this evidence
3 would go to the aggravating circumstances. Therefore,
4 it's not relevant to anything the jury is to consider
5 and make a finding on. And of course, it is the
6 potential for a decision based on passion and raw
7 emotion and not the law that this Court hands down.
8 We would like a ruling on that motion first.

9 **BY THE COURT:** Is that a motion in limine?

10 **BY MR. DE GRUY:** Yes, it is.

11 **BY THE COURT:** Okay. That motion is overruled.

12 **BY MR. DE GRUY:** And again--

13 **BY THE COURT:** -- The law in this state is that
14 that evidence is admissible.

15 **BY MR. DE GRUY:** And the second motion is that
16 if -- the only way I can imagine it would be remotely
17 relevant would be under the Victim Rights Act, and
18 under that act it clearly, it speaks of victim in the
19 singular. And therefore, putting on more than four
20 witnesses, more than one representative for each of
21 the four victims, would be beyond the scope of that
22 legislation. So we would ask that, without waiving
23 our objection to any of the testimony, we would ask
24 that it be limited to one person from each family.

25 **BY THE COURT:** Okay, I don't think the law
26 requires that I do that, and I'm not going to do that.
27 However, I will say that under 403 at this phase, as
28 well as the first phase, I can limit cumulative
29 evidence. So I direct both sides not to just to

Motion - JURY PRESENT

1 accumulate evidence for the purpose of accumulating
2 it. Make your point and move on I guess is what I'm
3 saying. Okay. So that motion is overruled. Are we
4 ready now?

5 BY MR. EVANS: The State is ready, Your Honor.

6 BY MR. DE GRUY: Yes, Your Honor.

7 BY THE COURT: Okay.

8 JURY ENTERS THE COURTROOM.

9 BY THE COURT: Does the State have a motion in
10 relation to--

11 BY MR. EVANS: Yes, Your Honor. At this point in
12 the trial, the State would move to be allowed to
13 reintroduce all of the exhibits and testimony from the
14 previous phase so that the jury may consider
15 everything that was done in the first phase in this
16 phase of the trial.

17 BY MR. DE GRUY: No objection, Your Honor.

18 BY THE COURT: That motion is sustained. All
19 right, who you will you have first?

20 BY MR. EVANS: Roxanne Ballard.

21 BY THE WITNESS: Do I need to be sworn again?

22 BY MR. EVANS: You have already been sworn.

23 BY THE COURT: You don't have to be sworn again.

24 BY MR. DE GRUY: Your Honor, are we not going to
25 give opening statements at this phase?

26 BY THE COURT: If y'all want an opening
27 statement, I will give you one. I have never had
28 anybody request one. That's the reason I didn't go
29 there.

Roxanne Ballard - DIRECT

1 **BY MR. DE GRUY:** Ms. Ballard is up there. That
2 is fine. We will cover it in closing.

3 **BY THE COURT:** Okay.

4 **BY MR. EVANS:** May I proceed, Your Honor?

5 **BY THE COURT:** Yes.

6 **BY MR. EVANS:** Give me just a second.

7 **ROXANNE BALLARD,**

8 a white female called again to testify as a witness by the
9 State of Mississippi, this time on the SENTENCING PHASE,
10 having been previously sworn, testified as follows, to-wit:

11 DIRECT EXAMINATION BY MR. EVANS:

12 Q. Ms. Ballard, you are the same Roxanne Ballard that
13 testified in the first phase; is that correct?

14 A. Yes, I am.

15 Q. Ms. Bertha Tardy was your mother?

16 A. Yes.

17 Q. If you would, tell the jury just a little bit about
18 your mother.

19 A. My mother was a very beautiful woman who was a very
20 strong Christian woman. She was very involved in this
21 community. She was a leader in her church. She was a leader
22 in this community including the Economic Council, the Habitat
23 for Humanity, the Leadership Committee, more things than I
24 can even recall. She was very, very involved. She liked to
25 help people, and she did everything she could to help this
26 community and to help the people in it.

27 Q. How did her death affect you and your family?

28 A. Well, there is no way in a couple of minutes I can
29 tell you what the last seven and a half years have been like.

Roxanne Ballard - DIRECT

1 But I was eight weeks away from my due date with my second
2 child the day my mother was murdered. And it caused a lot of
3 stress that I can't even describe. I had a four and a half
4 year old son who was very attached to his grandmother, and we
5 had to tell him. We had to explain to him what had happened
6 because it was all over the news and the radio and
7 everything. It's a very hard thing to look in the eyes of a
8 little bitty kid and tell them something like this can happen
9 to people. They have had to watch us go through this for all
10 this time. And even last night asking questions of why, why
11 this is happening to us. Why is this happening to our
12 family? Why does my mama have to go to trial? Why did a bad
13 person do this to four people?

14 I also lost Carmen, who I had known for 20 years
15 who I was very attached to. My child Jeremy was very
16 attached to her. He spent a lot of time in and out of the
17 store. She baby-sat him, took care of him. It has just been
18 a nightmare.

19 Q. How long did Carmen work at the store?

20 A. For 20 years.

21 Q. Do you know how long Robert Golden had been working
22 there?

23 A. It was his first day.

24 Q. And do you know how long Derrick Stewart had been
25 there?

26 A. It was his second day.

27 Q. Ms. Ballard, I'm not going to be long. I just want
28 to ask you one more question. Do you have an opinion -- you
29 know the jury has got to determine what penalty is

Ballard - DIRECT - Charles Tardy - DIRECT

1 appropriate in this case. Do you have an opinion of what
2 sentence would be appropriate in this case?

3 A. Yes, sir. I do.

4 Q. Which penalty is that?

5 A. Death penalty.

6 BY MR. EVANS: Your Honor, I will tender this
7 witness.

8 BY MR. DE GRUY: I have no questions.

9 BY THE COURT: Thank you, Ms. Ballard. Who do
10 you have next?

11 BY MR. EVANS: Chuck Tardy.

12 CHARLES TARDY,

13 a white male called to testify as a witness by the State of
14 Mississippi on the SENTENCING PHASE, testified as follows,
15 to-wit:

16 BY THE COURT: State your name, please, sir.

17 BY THE WITNESS: Charles Holeman Tardy.

18 DIRECT EXAMINATION BY MR. EVANS:

19 Q. Mr. Tardy, how were you related to Bertha Tardy?

20 A. Bertha was my stepmother. She and my father had
21 been married for a little more than a year, but I have known
22 Bertha all my life. She was a baby sitter for me when I was
23 five or six years old. She had been employed by my father in
24 the furniture business for thirty something years, so it was
25 someone I have known forever.

26 Q. What type of person was Bertha?

27 A. Bertha was a very loving, considerate woman. She
28 was just a great person.

29 Q. What type of impact did her death have on you?

Charles Tardy - DIRECT

1 A. Well, it was devastating for our entire family. We
2 were all saddened by the loss, and it caused grave hardship
3 for my father, and it affected my children. I had a 13 year
4 old daughter at the time who was very attached to her because
5 she had known her too all of her life, who subsequently had
6 great fears about being at home alone and had to seek
7 psychiatric counseling. So we were all affected by this.

8 **BY MR. EVANS:** Your Honor, I have no further
9 questions of this witness.

10 **BY THE COURT:** Wait just a minute, sir. Mr.
11 Tardy. Do you have any questions?

12 **BY MR. DE GRUY:** No, I have no questions.

13 **BY THE COURT:** Thank you. You may step down.
14 Who do you have next?

15 **BY MR. EVANS:** Benny Rigby.

16 (Mr. Tardy leaves the witness stand.)

17 **BY THE COURT:** Let me -- did we swear Mr. Tardy?

18 **BY THE COURT REPORTER:** No, sir.

19 **BY THE COURT:** I don't believe we did.
20 Mr. Tardy, if you will come back up here just a
21 second. Hold on, Mr. Rigby.

22 (Mr. Tardy stands before the Court.)

23 **BY THE COURT:** Would you raise your right hand,
24 sir. Do you solemnly swear that the testimony that
25 you just gave was the truth, the whole truth, and
26 nothing but the truth so help you God?

27 **BY THE WITNESS:** I do.

28 **BY THE COURT:** All right. Does anybody have any
29 questions concerning the fact that he didn't get sworn

Benny Rigby - DIRECT

1 prior to--

2 BY MR. DE GRUY: -- No, sir.

3 BY MR. EVANS: No, sir.

4 BY THE COURT: All right, Mr. Tardy. Mr. Rigby.

5 BENNY RIGBY,

6 a white male called to testify as a witness by the State of
7 Mississippi in the SENTENCING PHASE, having first been duly
8 sworn, testified as follows, to-wit:

9 BY THE COURT: Have a seat.

10 DIRECT EXAMINATION BY MR. EVANS:

11 Q. State your name, please.

12 A. Benny Rigby.

13 Q. Benny, how were you related to Carmen Rigby?

14 A. Carmen was my wife for 25 and a half years.

15 Q. Can you tell us just a little bit about Carmen?

16 A. Well, everybody that knew Carmen knew that she
17 loved life and she enjoyed life, and you hardly ever met her
18 that she wasn't smiling. She was a very loving wife and a
19 wonderful mother.

20 Q. How did her death that day impact on you and your
21 family?

22 A. Well, as Roxanne said, it's hard to describe
23 something like this to anybody else if you haven't gone
24 through it. At that time my eldest son Benji had just
25 finished college, and my youngest son Bryan had just finished
26 high school, and had just gotten a scholarship to play
27 baseball at Holmes Jr. College, and she was all excited about
28 that. But anyway, she never got to see him play, and she
29 loved her children, and she was always wanting to be there

Benny Rigby - DIRECT - Bryan Rigby - DIRECT

1 for them as I was. And a lot of things that she was cheated
2 out of like when Benji got married, she wasn't able to be
3 there. We have got a grand baby that she will never get to
4 see, and she loved children. No matter what child she was
5 around, she had to pick it up, and she just, she loved
6 children. And it's hard to know that, you know, your
7 grandchild will never get to see their grand mom.

8 Q. Benny, is there anything else that you would like
9 to add?

10 A. No, sir. Other than I thought about this a lot,
11 and I really believe that a person that does something like
12 this deserves the death penalty. They deserve to be put to
13 death.

14 BY MR. EVANS: Your Honor, I will tender this
15 witness.

16 BY THE COURT: Any questions?

17 BY MR. DE GRUY: No questions, Your Honor.

18 BY THE COURT: You may step down, Mr. Rigby.

19 WITNESS EXCUSED.

20 BY MR. EVANS: Bryan Rigby next, Your Honor.

21 BRYAN RIGBY,

22 a white male called to testify as a witness by the State of
23 Mississippi in the SENTENCING PHASE, having first been duly
24 sworn, testified as follows, to-wit:

25 DIRECT EXAMINATION BY MR. EVANS:

26 Q. State your name, please.

27 A. Bryan Rigby.

28 Q. Bryan, Carmen was your mother; is that right?

29 A. Yes, sir.

Bryan Rigby - DIRECT

1 Q. How old were you when she was killed?

2 A. I was 18.

3 Q. Can you tell us just a little bit about your
4 relationship with your mother?

5 A. Well, being the youngest child, we were very close.
6 And by being the youngest, I got a little special treatment
7 because I was her baby. But she, it was mine and my brother
8 and my dad's beck and call and did everything that she could
9 ever do for us to be sure that we had the best. And
10 basically, just I mean there was no doubt in our mind that
11 she loved us and knew that -- we knew that and just a great
12 person to be around, I mean just unbelievable person. As my
13 dad said, she loved children and loved us. And as my dad was
14 saying, I was 18 and just graduated high school and going to
15 college and about to go to college. I had just signed a
16 baseball scholarship and everything, and I thought my little
17 world was perfect. But without her, there is nothing.

18 Q. Bryan, is there anything else you would like to
19 add?

20 A. Just that, I mean could I tell you how this has
21 affected mine and my family's life, and I mean just the
22 little things, the things that are supposed to be exciting.
23 Going to college and when you are leaving and going to
24 college, it is supposed to be exciting, and when you leave
25 and go to college, you feel like you are abandoning your
26 family, and it shouldn't be that way.

27 BoBo and I were very close. And I'm the one that
28 got him the job. And I think about that every day. And just
29 like they say, that this man destroyed four families' lives.

Bryan Rigby - DIRECT - Jimmy Latham - DIRECT

1 And there is nothing anybody can say and nothing anybody can
2 do to replace that. His family still gets to see him. He
3 gets to breathe. He has a thought process, and he took that
4 away from four people.

5 BY MR. EVANS: Your Honor, we tender this
6 witness.

7 BY MR. DE GRUY: We have no questions, Your
8 Honor.

9 BY THE COURT: You may step down, Mr. Rigby.

10 WITNESS EXCUSED.

11 BY MR. EVANS: Reverend Jimmy Latham.

12 BY MR. DE GRUY: Your Honor, could the bailiff
13 pass the -- I think some of the jurors may need
14 tissue.

15 BY THE COURT: Sure.

16 JIMMY LATHAM,

17 a white male called to testify as a witness by the State of
18 Mississippi in the SENTENCING PHASE, having first been duly
19 sworn, testified as follows, to-wit:

20 BY THE COURT: State your name, please, sir.

21 BY THE WITNESS: Jimmy Latham.

22 DIRECT EXAMINATION BY MR. EVANS:

23 Q. Reverend Latham, I want to ask you if you knew
24 Carmen Rigby during her life? Did you know Carmen Rigby?

25 A. I did.

26 Q. Can you tell the ladies and gentlemen of the jury a
27 little bit about what Carmen was like?

28 A. I was called to be Carmen's pastor in 1988 in
29 October. And of course, I had known her prior to that, but

Jimmy Latham - DIRECT

1 in the church family, you get to know them real well. Carmen
2 was a lady of the first order. I mean in regards to her love
3 for her family, her church and her pastor, she was top. She
4 served the church very faithfully. She was our nursery
5 mother, and I don't care how many children that came into the
6 church, she would care for them. She didn't wait -- excuse
7 me. She didn't have to wait for somebody to tell her to go
8 to see about the children. She would get them and carry them
9 to the nursery and tend to them. And like the previous
10 testimony, she loves children. And it was, in all the times
11 that we were there -- of course, she was treasurer at the
12 time of her death and very efficient. But her love for
13 people was radiated through her daily, constantly, to not
14 just the church family, but to people in the community. She
15 had a compassion for them, and I just -- for a lady, she
16 would, it would be one that you could very, you could say
17 well, thank God for giving me a lady, a woman, a spouse, a
18 wife, a mother like Carmen Rigby.

19 Q. What type of impact did her death have on this
20 community?

21 A. Oh, it devastated our church. It was, it seemed
22 like it made an indelible mark on the church body, and it
23 never was the same after that. It never was the same after
24 her death.

25 Q. Reverend Latham, is there anything else you would
26 like to add?

27 A. I would like to say one thing. As much as she
28 loved children, I regret and I'm sorry that she never got to
29 hold and love her little granddaughter.

Jimmy Latham - CROSS - Willie Golden - DIRECT

BY MR. EVANS: Tender the witness, Your Honor.

CROSS-EXAMINATION BY MR. DE GRUY:

Q. Reverend Latham, I know, I imagine you have counseled the family a great deal over the years and been a comfort to them. Would you agree to that?

A. I have tried.

Q. And I know you are trying to help them move on because that is what those of you who are left behind have to do, all of us. Correct?

A. (No audible response.)

Q. And I would just ask you if you agree with me, that it is time that we begin some healing?

A. Is it -- I can't--

Q. -- Is it time that we begin some healing?

A. Oh, definitely.

BY MR. DE GRUY: That's all I have, Your Honor.

BY THE COURT: Anything else, Mr. Evans?

BY MR. EVANS: No, sir.

BY THE COURT: Reverend, you may step down.

WITNESS EXCUSED.

BY THE COURT: Who do you have next?

BY MR. EVANS: Willie Golden.

WILLIE GOLDEN,

a black male called to testify as a witness by the State of Mississippi in the SENTENCING PHASE, having first been duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION BY MR. EVANS:

Q. State your name, please.

A. Willie Golden.

Willie Golden - DIRECT

1 Q. Mr. Golden, how were you related to Robert?

2 A. Robert Golden was my brother.

3 Q. Can you tell the ladies and gentlemen of the jury a
4 little bit about Robert?

5 A. Well, Robert was the third one in the family, and
6 he graduated from high school at Winona High School and went
7 on to college. And he accepted a job and later got married,
8 and he had two children in life. He worked hard to try to
9 support those two children because they were very sickly.
10 And he just struggled in life, and he was just a kind person
11 and did a lot of -- he was just faithful to his family.

12 Q. You say he had how many children?

13 A. He had two. Two sons.

14 Q. How old were they at the time he was killed?

15 A. One was about 17, and the other one probably was
16 about eight.

17 Q. Mr. Golden, were you close to your brother?

18 A. Well, he and I was close because we grew up
19 together. The rest of my family members grew up and they
20 left and went to different places, but he and I was always
21 close. We lived all our lives here in Winona together. So
22 we always saw each other at least once or twice a week, so we
23 was close.

24 Q. How has his death, being murdered affected you and
25 your family and his family?

26 A. Well, it affected me a great deal because like I
27 say, we was close. And at the time, along about the time
28 that happened, a little after that happened, I had went
29 through a divorce before then, and he always came by and

Willie Golden - DIRECT

1 checked on me. You know, when he get off work at night, he
2 would come by, sometime wouldn't even come in. He would just
3 come by the window and asked me was I all right. And that
4 just meant so much to me at that particular time, and he just
5 meant a great deal to me because like I say, we was close.
6 He and I was close, and we just always seen each other. And
7 the last day before this happened, he came by, and we sit and
8 talked, and not knowing that was the last time that we would
9 talk. So he meant a great deal to me as a brother. He was
10 just a brother and a friend, just you know, just all those
11 things to me because we was close.

12 Q. Do you know how his death affected his children?

13 A. Well, his death affected the children, especially
14 his young son because he had a lot of problems. You know, he
15 is kind of handicapped like, and I know it had a lot of
16 effect on him, you know, and his wife because she is just
17 kind of in a mentally stage back and forth to the doctor. So
18 it had a great deal, you know, it just really put a burden on
19 his family.

20 Q. Mr. Golden, is there anything else you would like
21 to add?

22 A. Well, the main thing, I hate to pass judgment on
23 anybody, but I just want the right thing to be done and just
24 to be over.

25 BY MR. EVANS: Tender the witness, Your Honor.

26 BY THE COURT: Wait just a second, Mr. Golden.

27 CROSS-EXAMINATION BY MR. DE GRUY:

28 Q. Mr. Golden, I'm sorry; I just have one question.
29 Whatever the jury decides, you are comfortable with; that's

Willie Golden - CROSS - Dale Stewart - DIRECT
the right thing?

A. If this jury decides.

Q. I just wanted to understand what you were saying?

A. Yes.

BY MR. DE GRUY: Thank you.

BY THE COURT: Anything else, Mr. Evans?

BY MR. EVANS: No, sir.

BY THE COURT: Mr. Golden, you may step down.

WITNESS EXCUSED.

BY THE COURT: Who will you have next?

BY MR. EVANS: Dale Stewart.

DALE STEWART,

a white male called to testify as a witness by the State of Mississippi in the SENTENCING PHASE, having first been duly sworn, testified, as follows, to-wit:

BY THE COURT: State your name, please, sir.

BY THE WITNESS: Dale Stewart.

DIRECT EXAMINATION BY MR. EVANS:

Q. Dale, how were you related to BoBo?

A. He was my younger brother. He was six years younger than me.

Q. How old was BoBo when he was killed?

A. Sixteen. About three weeks after his sixteenth birthday just happened.

Q. And how old were you at that time?

A. Twenty-two.

Q. Can you tell us just a little bit about what your younger brother was like?

A. Yes, sir. He was very outgoing, well liked by most

Dale Stewart - DIRECT

everybody. According to when this happened, the funeral was held at First Baptist Church that day, and the church was full, and he was 16 years old. So I believe he was well liked and respected by many.

Q. How close were you and your brother?

A. Very close.

Q. What, can you describe what kind of impact his being murdered had on you and your family?

A. Well, he was deprived of a lot. He never got, never had a prom, didn't graduate high school. We were taken away; Christmases were taken away, birthdays. He was, he was a very good athlete. The night before, the night before he was shot, he pitched a seven to nothing shut out in an all star baseball game. As far as the impact on the community, going by the grave site, and one year after this happened, they named a baseball field after him. (NOTE: Witness is crying.) I'm sorry.

Q. It's okay.

A. But my mother and father, to see them hurt -- I don't know what it's like to lose a child or a mother or a father. But I guarantee it hurts as bad to lose a sibling and a best friend.

Q. Dale, is there anything else you would like to add?

A. I would. BoBo lived for a week in the intensive care unit in Jackson, Mississippi. He was brain dead. He never responded. He was hooked up to machines and everything, and in our situation we did, other than the other three families, we did have an opportunity to say goodbye, whether he was responsive or not. We had time to spend with

Dale Stewart - DIRECT - Kathy Perminter - DIRECT

him. And I just want people that do remember BoBo to remember what he was like before any of this happened.

BY MR. EVANS: Your Honor, I tender this witness.

BY MR. DE GRUY: We have no questions.

BY THE COURT: You may step down.

WITNESS EXCUSED

BY MR. EVANS: Kathy Perminter will be the next witness, Your Honor.

KATHY PERMINTER,

a white female called to testify as a witness by the State of Mississippi in the SENTENCING PHASE, having first been duly sworn, testified as follows, to-wit:

BY THE COURT: State your name, please.

BY THE WITNESS: Kathy Perminter.

DIRECT EXAMINATION BY MR. EVANS:

Q. Kathy, how were you related to BoBo?

A. I was BoBo's mother.

Q. Can you tell us just a little bit about BoBo and your family?

A. Yes, sir. I could tell you a lot, but to make it short, BoBo was the youngest of my two children. He was my baby. There is six years difference between Dale and BoBo. And from the time he -- I don't know; Dale, he was six years old at the time, so I was just more strong to BoBo at that time. But as he grew older and all, BoBo had a dream. He had a big dream of life. He was in the second grade. He told me one night; he said, "Mama," he said, "I would love to just go get a GED and go to work somewhere. I just want to make money and just not go to school and just make money; go

Kathy Perminter - DIRECT

1 get a job and make money." Well, the night before all this
2 happened, he called me excited about his job at Tardy
3 Furniture Company. He said, "Mama, I'm really going to like
4 this job." He said, "It's cool inside." He said, "All I
5 done was sweep the floors and, you know, just do what they
6 told me, dust." And before that, he had been out in the hot
7 sun painting fences, and he didn't like it. And I think
8 Carmen was the one that got him the job. BoBo loved
9 baseball. And that was the dream that he wanted to fulfill.
10 He had told me prior, when he first started playing baseball,
11 he said, "Mama, I want to play for the pros one day," and he
12 was so good. Everyone that new Bo, they loved him. They
13 loved him when they first met him. He always had a smile,
14 never had an enemy that I know of; never crossed paths with
15 anyone.

16 The impact as far as my family, it's hard. It's
17 hard to go to Christmas. It's a part of you missing. It's a
18 part of my family missing. When this all happened, it was
19 like one side of me is gone, and it will never come back.
20 And I'm ready for some peace. I have a peace knowing that Bo
21 is in heaven, but he is an angel in heaven. (NOTE: Witness
22 is crying.) But I want to be able to put all this to a
23 closure and not have to go through this any more.

24 Bo didn't graduate from school. He didn't have
25 that opportunity to walk down the aisle and get his diploma.
26 My mom, she has a wall in her house at that time of all of
27 her grandchildren when they graduated, their senior
28 portraits. Bo's was the next one up. He was in a beauty
29 pageant. After all this happened, I had a photographer to

Kathy Permitter - DIRECT - Raleigh Wood - DIRECT

1 take just from his shoulders up to get a senior portrait so I
2 could fill that place because I couldn't stand it being
3 vacant. But I'm just ready for the peace.

4 BY MR. EVANS: Your Honor, I will tender this
5 witness.

6 BY MR. DE GRUY: No questions.

7 BY THE COURT: You may step down.

8 WITNESS EXCUSED.

9 BY MR. EVANS: Raleigh Woods, Your Honor.

10 RALEIGH WOOD,

11 a white male called to testify as a witness by the State of
12 Mississippi on the SENTENCING PHASE, having first been duly
13 sworn, testified as follows, to-wit:

14 BY THE COURT: State your name. Go ahead.

15 DIRECT EXAMINATION BY MR. EVANS:

16 Q. Would you state your name?

17 A. Raleigh Wood.

18 Q. Mr. Woods, how did you know BoBo Stewart?

19 A. At that time I was head baseball coach at Winona
20 High School, and BoBo was one of my players. And he was, he
21 was a super guy. He was always, always happy, always had a
22 smile on his face. Everybody loved BoBo. He was my leading
23 hitter as a sophomore. I think he batted like .427, and he
24 was, he was a super athlete. And BoBo would have gone on,
25 and he would have played college baseball. He had that type
26 of ability where he would have gone on and played, and that
27 ability was-- he never had that chance. It was taken from
28 him. But he was a super, super young man. I watched him
29 play the night before. He would, he came up to me right

Raleigh Wood - DIRECT

1 after the ball game, and he said, "Coach, did you see me?" I
2 said, "You looked great out there." He just pitched a great
3 ball game. He was going to be doing a lot of pitching for me
4 the next year. He said, "Are you coming back tomorrow
5 night?" I said, "I'm going to be back again tomorrow night
6 to watch you again." And he was just that kind of a
7 person -- yes, sir; no, sir. He would come out of his way to
8 see you and talk to you and just check on you, see how you
9 are doing. He would play with my little girl. He loved
10 kids. But he was a great person.

11 Q. What type of impact did his death have on this
12 community?

13 A. It affected the entire high school. You know, the
14 kids, all the kids over there, the entire baseball team. You
15 know, it just affected all of them. BoBo was the kind that
16 would, you know, get to practice, and he would cheer
17 everybody up. And he always had that smile on his face. You
18 know, if somebody was having a bad day, he would try to, he
19 would cheer them up, get them going. And he wasn't there
20 after that, you know, and it just wasn't the same because
21 nobody was really there to take that role, you know, that
22 BoBo had done. He was the one that picked people up, and
23 everybody, you know, looked to, for him in that role, and
24 that's what he did. He was a super young man.

25 BY MR. EVANS: Your Honor, I will tender this
26 witness.

27 BY MR. DE GRUY: No questions.

28 BY THE COURT: You may step down.

29 WITNESS EXCUSED.

Archie Flowers - DIRECT

1 **BY MR. EVANS:** Your Honor, the State of
2 Mississippi rests.

3 STATE OF MISSISSIPPI RESTS ON SENTENCING PHASE.

4 **BY THE COURT:** Who will you have first?

5 **BY MR. DE GRUY:** Your Honor, we call Archie
6 Flowers.

7 **ARCHIE FLOWERS,**
8 a black male called to testify as a witness by the Defendant
9 in the SENTENCING PHASE, having first been duly sworn,
10 testified as follows, to-wit:

11 **BY MR. DE GRUY:** May I proceed?

12 **BY THE COURT:** Yes, sir.

13 DIRECT EXAMINATION BY MR. DE GRUY:

14 Q. Would you please state your name.

15 A. Archie Lee Flowers.

16 Q. Mr. Flowers, where do you live?

17 A. In Winona.

18 Q. And how long have you lived there?

19 A. Probably about forty something years.

20 Q. Are you working now?

21 A. Right. Working at Wal-Mart.

22 Q. How long have you worked at Wal-Mart?

23 A. Three years.

24 Q. And what is your relationship to Curtis Flowers?

25 A. We real close.

26 Q. And you are his father?

27 A. Right.

28 Q. You said you are real close. Were there things as
29 Curtis was growing up that y'all did together?

Archie Flowers - DIRECT

1 A. We sung together. You know, I got a group, and he
2 sang in my group.

3 Q. And what kind of group is that?

4 A. Gospel group.

5 Q. How long have you been involved with the gospel
6 group?

7 A. I think about thirty something years.

8 Q. What type of places do y'all sing?

9 A. All around the country, up north.

10 Q. Do you do public concerts or--

11 A. No -- sometimes and benefit programs.

12 Q. Benefit programs?

13 A. Right.

14 Q. Is this a paying job for you? Are you a
15 professional musician?

16 A. No.

17 Q. And you said that Curtis sang with you?

18 A. Right.

19 Q. How long was he part of your group? What age was
20 he when he joined your group?

21 A. I guess he was about 12 or 13, something like that.

22 Q. So I assume it wasn't a paying job for him?

23 A. No, it wasn't paid.

24 Q. Was there a lot of work involved in being part of a
25 gospel group, a traveling gospel group?

26 A. It is when, you know, you are traveling. You have
27 got to see to getting your uniforms, stuff like that.

28 Q. What kind of singer is Curtis?

29 A. He is a real good singer.

Archie Flowers - DIRECT

1 Q. Do you have other children?

2 A. Sho' do.

3 Q. Could you tell us who they are?

4 A. One of them -- my oldest son Archie, and my oldest
5 girl Felicia, and my next girl is Priscilla, and the next
6 girl is Shareta.

7 Q. It's six children?

8 A. Six.

9 Q. I won't ask you their ages.

10 A. I probably couldn't remember.

11 Q. Were your children close as they were growing up?

12 A. Yes, sir.

13 Q. What kind of relationship did Curtis have with
14 them?

15 A. They always was cracking jokes, playing. But
16 Curtis, he, every time we go rehearse, he always crack a joke
17 before we start rehearsing. So I tell him, I said, "Now we
18 are fixing to get serious."

19 Q. Would he get serious?

20 A. He would get serious then.

21 Q. Do you give your kids chores to do around the
22 house?

23 A. Yes, sir.

24 Q. And how was Curtis?

25 A. He did it; he did it all. You didn't have to
26 actually tell him. He know what he had to do. He would do
27 it.

28 Q. Did he, what kind of relationship did he have to
29 the neighbors?

Archie Flowers - DIRECT

1 A. Oh, he was good to neighbors. Any of the neighbors
2 around there could tell you. He always trying to help
3 somebody.

4 Q. What type of things would he do?

5 A. He would go across the street. He would rake
6 leaves for a lady, and he shaved an old man across the
7 street, you know. He was just always involved in stuff like
8 that.

9 Q. Do you have a close family, Mr. Flowers?

10 A. Real close.

11 Q. And what about your wife, Mr. Flowers? Is that
12 Curtis' mother?

13 A. Right.

14 Q. How long have you been married?

15 A. Forty years.

16 Q. Is she in the courtroom today?

17 A. Yes, sir.

18 Q. Are you here today to speak for her?

19 A. Yes.

20 Q. I know yesterday was enough to-- a difficult night
21 for her last night. Did she ask you to be her spokesperson
22 today?

23 A. Right.

24 BY MR. DE GRUY: That's all I have, Your Honor.

25 BY MR. EVANS: No questions.

26 BY THE COURT: You may step down, sir.

27 WITNESS EXCUSED.

28 BY MR. DE GRUY: Call Nelson Forrest.

29 BY THE COURT: Nelson Forrest. Wait a minute.

Nelson Forrest - DIRECT

1 Holly, what are you doing?

2 BY THE BAILIFF: I was going to turn the air
3 conditioner fan on.

4 BY THE COURT: Okay, well, let's just stay down
5 here for right now.

6 (NOTE: Thermostat was in the back of the jury
7 box.)

8 NELSON FORREST,
9 a black male called to testify as a witness by the Defendant
10 in the SENTENCING PHASE, having first been duly sworn,
11 testified as follows, to-wit:

12 BY THE COURT: Have a seat up here.

13 DIRECT EXAMINATION BY MR. DE GRUY:

14 Q. Mr. Forrest, could you please tell us your name.

15 A. Nelson Forrest.

16 Q. Mr. Forrest, where do you live?

17 A. 116 Hazel Circle, here in Winona.

18 Q. How long have you lived in Winona?

19 A. All my life.

20 Q. Are you currently employed?

21 A. Yes.

22 Q. And could you tell us what you are doing?

23 A. I am employed with the Mississippi Military
24 Department, Camp McCain. I am also Supervisor District Five
25 here in Montgomery County. I'm a pastor of the United
26 Methodist Church in Wespin in Oktibbeha County. And I'm a
27 member of the Mississippi National Guard here in Winona, the
28 1st and 114th field artillery.

29 Q. And you know Curtis Flowers?

Nelson Forrest - DIRECT

1 A. Yes.

2 Q. And are you related to Curtis Flowers?

3 A. Yes.

4 Q. How are you related to him?

5 A. His father and my father are first cousins.

6 Q. Were you close to Curtis when he was growing up?

7 A. Yes.

8 Q. Tell me a little bit about that relationship. How
9 often you would see him?

10 A. Well, we had a good relationship. We were making,
11 I guess we had a bond there. We would see each other at
12 least once a week or more. He would either come by my house,
13 or I would meet him somewhere in the street or down at my
14 mother-in-law's. She stayed right across round the corner
15 from him, but we made contact at least once a week.

16 Q. And what type of things did y'all do on these
17 meetings?

18 A. Well, we just talked about different things. A lot
19 of times if he had a new song that he would want to try to
20 sing, he would talk to me about it, and he was a little shy
21 at first starting off. And for some reason, he thought I was
22 the best singer in the world. And I would encourage him
23 just, you know; nervous is all right. That is just part of
24 life.

25 Q. Like a mentor to him?

26 A. Yes.

27 Q. Now you told us you were a singer. Do you sing in
28 a group as well?

29 A. Yes. I am a member of the Forrest Brothers gospel

Nelson Forrest - DIRECT

singing group here from Winona.

Q. Have you ever sung with Curtis?

A. Yeah, we have been on programs with him a lot of times.

Q. Now he was in another group?

A. Right.

Q. But y'all would sing together. Did Curtis attend church with you?

A. Yes.

Q. What was it like? What was Curtis like when he was around you?

A. Well, he was happy around me. He's still happy. He had a little shyness, but, you know, he was getting over that. But it was a lot of fun. We laughed and talked, and he would tell me things he had been involved in, and we shared our deal.

Q. Do you still communicate with Curtis?

A. Well, mostly communications I have with Curtis is through his mother and father. He just send me word that not to worry about him; he all right, and to keep praying for him. That's the way we handle it.

BY MR. DE GRUY: That's all I have, Your Honor.

BY MR. EVANS: No questions.

BY THE COURT: You may step down, sir.

WITNESS EXCUSED.

BY MR. DE GRUY: Tarryon Daniels.

TARRYON DANIELS,

a black male called to testify as a witness by the Defendant in the SENTENCING PHASE, having first been duly sworn,

Tarryon Daniels - DIRECT

testified as follows, to-wit:

BY THE COURT: State your name, please.

BY THE WITNESS: Tarryon Daniels.

DIRECT EXAMINATION BY MR. DE GRUY:

Q. Mr. Daniels, where do you live?

A. Here in Winona, 32 Powell Street.

Q. How long have you lived here?

A. All my life.

Q. And how old are you?

A. Thirty-three.

Q. And are you working now?

A. Uh-huh. Right now I'm employed in Greenwood at John Richard.

Q. How long have you been working there?

A. Seven and a half years.

Q. And you know Curtis Flowers?

A. I do.

Q. How long have you known Curtis?

A. All our life, all my life.

Q. Y'all grew up together?

A. We did.

Q. Did y'all play sports together?

A. Yeah, we played basketball together. We went fishing together, sung together.

Q. Did y'all ever work together?

A. Yeah, we worked at Richardson Brothers south across from Wal-Mart here in Winona.

Q. How long did y'all work together?

A. I'm thinking three and a half, maybe four years.

Tarryon Daniels - DIRECT

1 Q. What kind of worker was Curtis?

2 A. Curtis was a good worker. We had no complaints.
3 Everything you asked him to do, he would do it.

4 Q. Now you mentioned fish; you used to fish with him
5 and sing with him?

6 A. Uh-hum.

7 Q. Are you in, were you in a singing group with him?

8 A. I was.

9 Q. Could you tell me about that group?

10 A. It's a nice group. Like Archie said, we traveled
11 all over the world. I never did get a chance to make the
12 trips up north with them, but I sung here locally. And
13 Curtis was a good singer. He always made everybody happy
14 when he sung. When him and his father had a song together,
15 they sung and just touched on everybody.

16 Q. Are you still singing?

17 A. No, I'm not. I haven't sung since Curtis got
18 locked up.

19 Q. How come you are not singing?

20 A. Um, just don't seem right without Curtis.

21 BY MR. EVANS: Your Honor, I object. That is not
22 proper. There is specific case law that says impact
23 on defense witnesses is not proper.

24 BY THE COURT: That is a correct statement of the
25 law.

26 BY MR. DE GRUY: Your Honor, I can't ask him why
27 he quit singing? I think it goes directly to--

28 BY THE COURT: -- Why would that be relevant as
29 to why he quit singing?

Tarryon Daniels - DIRECT

1 BY MR. DE GRUY: Because if he were allowed to
2 answer, it would show a character trait of Mr.
3 Flowers.

4 BY MR. EVANS: No, sir. He is entitled to ask
5 about the Defendant, but according to Wilcher, Turner,
6 Jordan and a long line of cases, he is not allowed to
7 ask about any impact on defense witnesses.

8 BY MR. DE GRUY: I'm not asking about an impact
9 of anything this jury might do on him.

10 BY MR. EVANS: No, sir.

11 BY MR. DE GRUY: I'm asking about why he is no
12 longer singing, and it's directly related to their
13 relationship as co-members of the singing group, not
14 on anything--

15 BY THE COURT: I will allow it.

16 BY THE WITNESS:

17 A. I haven't sung in the group since Curtis left
18 because me and him used to ride together to most of the
19 programs, and it just, I just don't feel like I could do it
20 without him.

21 Q. Thank you, Tarryon.

22 BY MR. DE GRUY: That's all I have.

23 BY MR. EVANS: No questions.

24 BY THE COURT: You may step down.

25 WITNESS EXCUSED.

26 BY MR. DE GRUY: Kittery Jones.

27 KITTERY JONES,

28 a black male called to testify as a witness by the Defendant
29 on the SENTENCING PHASE, having first been duly sworn,

Kittery Jones - DIRECT

testified as follows, to-wit:

BY THE COURT: Have a seat. State your name.

BY THE WITNESS: Kittery Jones.

DIRECT EXAMINATION BY MR. DE GRUY:

Q. Mr. Jones, where do you live?

A. Here in Winona.

Q. And how long have you lived here?

A. All my life.

Q. Are you working now?

A. Yes, sir. I own my own business, heating and air conditioning and refrigeration.

Q. Do you do any other work?

A. Yes, sir. I preach the gospel of Jesus Christ.

Q. And where are you a preacher?

A. Right here in Winona.

Q. Are you related to Curtis Flowers?

A. Yes, sir.

Q. What, how are you related?

A. He is my cousin.

Q. Are you close to Curtis? Are y'all close?

A. Yes, sir.

Q. How would you characterize that relationship?

A. Well, when we was growing up, I spent majority of my time at their house. I stayed at his house just as much as I stayed at mine. We grew up together. We laughed; we played; we cried together. We just like brothers.

Q. Did y'all ever sing together?

A. No, sir. I can't sing. But I would ride with them, like if he would ask me. He would call me Spud. He

Jones - DIRECT - James Aiken - DIRECT

1 said, "Spud, you going to come to practice with us?" And I
2 tell him yeah, even though I didn't want to go, but I would
3 go. And we would ride on the back of the bus, and we would
4 just play all the way there and laugh and crack jokes.

5 BY MR. DE GRUY: That's all I have, Your Honor.

6 BY MR. EVANS: No questions.

7 BY THE COURT: You may step down.

8 WITNESS EXCUSED.

9 BY MR. DE GRUY: Your Honor, may I check on one.

10 (Mr. de Gruy confers with Ms. Ferraro.)

11 BY MR. DE GRUY: Very quickly, Your Honor. Your
12 Honor, we call Jim Aiken.

13 JAMES EVANS AIKEN,

14 a black male called to testify as a witness by the Defendant
15 in the SENTENCING PHASE, having first been duly sworn,
16 testified as follows, to-wit:

17 BY THE COURT: All right, have a seat right
18 there.

19 BY THE WITNESS: Thank you, sir.

20 BY THE COURT: State your name, please, sir.

21 BY THE WITNESS: My name is James Evans Aiken.

22 A I K E N.

23 DIRECT EXAMINATION BY MR. DE GRUY:

24 Q. Thank you, Mr. Aiken. Mr. Aiken, what is your
25 current employment?

26 A. I am president of James E. Aiken and Associates
27 Incorporated.

28 Q. And what does that company do?

29 A. It is a correctional consulting firm.

James Aiken - DIRECT

1 Q. And could you share with us your educational
2 background?

3 A. I was educated in elementary as well as high
4 schools in Camden, South Carolina. I attended Benedict
5 College in Columbia, South Carolina, to which I received a
6 degree, a Bachelor of Arts degree. And I have also received
7 a Master's degree in criminal justice from the University of
8 South Carolina that is in Columbia, South Carolina.

9 Q. And what is your background in corrections?

10 A. I started in corrections in 1971 in the capacity of
11 a social worker in the substance abuse program at a medium
12 security prison in South Carolina. This medium security
13 prison housed younger male inmates in a medium security
14 environment; that is, they were behind fences and gun towers
15 and security systems. However, they had opportunity to move
16 throughout the facility under supervision. From there I was
17 promoted to deputy warden of that same facility in South
18 Carolina. I am sorry; I was administrative assistant, then
19 deputy warden at that facility.

20 From there, I became deputy warden at the state
21 penitentiary in South Carolina. The state penitentiary,
22 which is also located in Columbia, housed the most dangerous
23 preditorial, disruptive, violent inmates, inmates that not
24 only inflicted violence in the community, but also inflicted
25 violence upon other inmates as well as the staff. This
26 facility is a maximum, super maximum security compound. It
27 also housed death row. It also housed inmate population that
28 were waiting adjudication for psychiatric evaluation. It was
29 about 1800 to 2000 inmates.

James Aiken - DIRECT

1 From there, I became the warden of the women's
2 prison, and this was also in Columbia, South Carolina. And
3 this housed maximum security female population as well as
4 medium and minimum security inmate population. From there, I
5 became deputy -- I'm sorry, from there I became warden of the
6 state penitentiary in South Carolina. And I just explained
7 to you the background of that facility and the mission of
8 that facility.

9 Also, while in the capacity of warden of that
10 facility, I was called upon to perform executions on inmates.
11 I have executed two inmates personally as well as managed the
12 death row population, as well as disruptive inmate
13 population--

14 BY MR. EVANS: -- Your Honor.

15 BY THE COURT: Wait just a minute.

16 BY MR. EVANS: Your Honor, I would -- and I was
17 going to go ahead and wait until later, but I would
18 object to any testimony that this witness has. We
19 have been furnished information that he is expected to
20 testify as to future dangerousness and adaptability to
21 prison life. The cases are very clear-- Hansen,
22 Skipper v. South Carolina, Jordan v. State. This is
23 not proper or relevant testimony for this jury to
24 hear, and we would object to this witness testifying
25 about any of the information that we have been
26 furnished that they expect him to testify to related
27 to that.

28 BY MR. DE GRUY: Your Honor, it is absolutely
29 relevant, and I suggest that the District Attorney

James Aiken - DIRECT

1 read Skipper v. South Carolina. It is precisely what
2 the Court said must be presented in the way of
3 mitigation.

4 BY THE COURT: Well, how does it get around
5 Wilcher?

6 BY MR. DE GRUY: Two things--

7 BY THE COURT: Where they were trying to show
8 photographs of Parchman and death row, maximum
9 security, testimony of prior prison officials.
10 Wilcher held such evidence has no relation to the
11 Defendant's character, his record, or the
12 circumstances of the crime.

13 BY MR. DE GRUY: Your Honor, we are exactly going
14 to get to this man's character and his adaptability to
15 prison. And it is absolutely proper, and that is what
16 Skipper holds. And we are not talking about trying to
17 show pictures of Parchman. We are trying to explain
18 to this jury based on Mr. Aiken's evaluation of Mr.
19 Flowers.

20 BY THE COURT: Has he made a personal evaluation
21 of him?

22 BY MR. DE GRUY: Yes, he has, Your Honor.

23 BY THE COURT: Okay. Well, let's get it to that
24 point, and then Mr. Evans, you may make another
25 objection. But right now, this has got nothing to do
26 with this because he has not stated his relationship
27 to Mr. Flowers. So you have got to make it specific
28 to get--

29 BY MR. DE GRUY: -- We have to lay our foundation

James Aiken - DIRECT

1 for his ability to make this evaluation, Your Honor,
2 and that's what we were attempting to do.

3 BY MR. EVANS: Which so far, we are objecting to
4 that because they have not done that.

5 BY MR. DE GRUY: And we haven't tendered him yet.
6 If we could have a little patience from the District
7 Attorney.

8 BY MR. EVANS: Your Honor, I object to that in
9 the record. That is not proper.

10 BY THE COURT: Well, you need to go ahead--

11 BY MR. DE GRUY: -- He is objecting to a witness
12 not being tendered prior to his being tendered, and he
13 is objecting to us laying the foundation. You can't
14 object to us not having laid the foundation--

15 BY THE COURT: -- Are you going to tender him as
16 an expert?

17 BY MR. DE GRUY: Yes, Your Honor.

18 BY THE COURT: Okay. Well, go ahead.

19 BY MR. DE GRUY:

20 Q. I am sorry, Mr. Aiken. If you can recall where you
21 were in sharing your background with us?

22 A. Yes. I was warden of the state penitentiary in
23 South Carolina which housed, as I was stating, death row
24 population as well as the most violent inmate population in
25 the State of South Carolina. From there, I became deputy
26 regional administrator, which I supervised 16 various prisons
27 within the South Carolina Department of Corrections to
28 include women's prisons, males' prisons, maximum, super
29 maximum, all the way down to minimum security facilities.

James Aiken - DIRECT

1 From there, I became Commissioner of Corrections or
2 Director of Corrections for the State of Indiana at which
3 time I had under my control as the chief executive officer
4 over 46, 47 facilities. And that ranged from juvenile
5 facilities, male facilities, adult facilities, female
6 facilities, as well as parole services and community
7 corrections.

8 And I might go back a little bit. Back in 1986, I
9 was asked by the United States Justice Department to begin
10 providing technical assistance and expert consultation to
11 other jurisdictions. And that included me in being involved
12 in teaching wardens how to be wardens of prisons, teaching
13 wardens how to be wardens of super maximum security prisons,
14 teaching leadership development, development of
15 classification systems within prison systems as well as jail
16 systems, hostage negotiations, critical event; that is,
17 hostage situations, riots, et cetera, how to prevent them.
18 Also, I was involved in providing this technical assistance
19 to just about every jurisdiction in the United States to
20 include Alaska as well as Hawaii, and the State of
21 Mississippi.

22 I have also, I might add that my experience
23 involved the classification of inmate population. And what I
24 mean by that, putting them in the proper management, proper
25 security, proper programming to insure the safety and well
26 being of staff, other inmates, as well as the general
27 community. And I have done this thousands and thousands of
28 times personally as well as to devise as well as to evaluate
29 other systems.

James Aiken - DIRECT

1 Getting back to my career, also when I left
2 Indiana, I became Director or Commissioner of the Department
3 of Corrections for the United States Virgin Islands which
4 gave me an opportunity to not only look at prisons on a
5 national level, but also an international level.

6 And as I stated at the beginning, I am president of
7 James E. Aiken and Associates, and I have provided technical
8 assistance, expert assistance in relationship to managing
9 prisons, not only in the United States but also in Costa
10 Rica, Puerto Rico, of course, in the Virgin Islands, Canada,
11 and the Dutch Kingdom.

12 Q. Okay. Have you ever made assessments of
13 classifications in corrections practices here in Mississippi?

14 A. Yes. I have provided technical assistance to the
15 State of Mississippi on site as well as at the National
16 Academy of Corrections as well as other off-sites in
17 relationship to not only classification of inmate population,
18 but managing prison security systems.

19 Q. In your 30 plus years in corrections, have you ever
20 been qualified as an expert in corrections in classification
21 of inmates?

22 A. Yes, I have, sir.

23 Q. Can you tell us how many times?

24 A. Oh, I would say 30 to 40 times, 35 or 40.

25 Q. And what jurisdictions have you been accepted as an
26 expert in?

27 A. I have been accepted as an expert in judicial
28 proceedings in the State of Florida, the State of Georgia,
29 the State of South Carolina, the State of North Carolina, the

James Aiken - DIRECT

1 State of Virginia, the State of Alabama, the State of
2 Mississippi, the State of Missouri, the State of Louisiana,
3 the State of Florida--I mean Arizona, United States District
4 Court of Connecticut, United States District Court of
5 District of Columbia, United States District Court of
6 Georgia, United States District Court of Alabama.

7 BY MR. DE GRUY: Your Honor, at this time we
8 tender Mr. Aiken as an expert in classification of
9 inmates and correction procedures.

10 BY MR. EVANS: Your Honor, the State would renew
11 its objection. This expertise, even if he be an
12 expert, has nothing to do with this particular
13 hearing. The cases are very clear. Only an expert
14 that has been accepted as an expert in the field of
15 future behavior is qualified to testify. And as this
16 Court is familiar in Eskridge v. State, which this
17 Court tried, in that particular case there was even a
18 psychologist that the Supreme Court said could not
19 testify in that particular case because he was not
20 even an expert in the field of future behavior. Any
21 expertise in prison classification is irrelevant to
22 what we are here on today, and I would again object.

23 BY MR. DE GRUY: I have one question.

24 BY MR. DE GRUY:

25 Q. Mr. Aiken, is part of making a classification
26 decision, does it involve making a decision on future
27 dangerousness of an inmate?

28 A. Yes.

29 BY MR. DE GRUY: We would again tender Mr. Aiken

James Aiken - DIRECT

1 as an expert. And the Eskridge case, Your Honor, I am
2 sure both you and Mr. Evans are more familiar with it.
3 But in that case the psychologist had never evaluated
4 Mr. Eskridge and could give nothing, no -- nor his
5 records, and the problem was, is that in Eskridge they
6 were trying to talk about generalities. We are not
7 talking about generalities or what it would be like in
8 prison. We are talking about Mr. Flowers and how, how
9 he has conducted himself in prison.

10 BY THE COURT: At this point in his testimony, I
11 will accept him as an expert in the field of prison
12 classification. As to his expertise in future
13 behavior, I think you need to establish that a little
14 bit further than what you have done, and I think he
15 needs to be tendered--

16 BY MR. EVANS: --And I would like to voir dire
17 him, Your Honor.

18 BY THE COURT: Okay, well, I'm going to let
19 him -- I'm going to let you finish first, okay.

20 BY MR. DE GRUY:

21 Q. Mr. Aiken, in determining classification, making
22 classification decisions, and you have testified that you
23 develop plans and assist states like Mississippi in improving
24 plans for the classification of inmates. Is a part of that,
25 a subgroup of that expertise, does it require the assessment
26 of future dangerousness?

27 A. That is correct. What you do is assess the
28 individual's history, age, as well as a number of other
29 factors, and you determine what is the information that is

James Aiken - DIRECT

1 gathered in relationship to how this person is going to
2 behave from here on in this type of prison environment, and
3 what type of management, what type of security, what type of
4 program addict interventions that you need in order to
5 prevent future dangerousness or to control future
6 dangerousness as well as to anticipate the probability of
7 what type of future dangerousness this individual represents
8 while in the correctional setting.

9 Q. And as a warden and a classification supervisor,
10 that person has the responsibility of protecting their
11 employees as well as the public and other inmates; is that
12 correct?

13 A. That is correct. Classification is looking into
14 the future. The classification is looking at a set of
15 information and data, making the determination on that
16 information and data in relationship to what this individual
17 is capable of doing in the future while in this environment.

18 Q. So when you say this environment, you are talking
19 about institutionalized?

20 A. That is correct.

21 Q. So is it fair to say that if you, that the
22 determination of the future dangerousness of an inmate is
23 critical to the classification process?

24 A. It's essential as well as critical. It is the
25 foundation for people managing prisons. It is the backbone,
26 looking at previous behavior or lack thereof and making a
27 determination in relationship to future behavior.

28 BY MR. DE GRUY: Your Honor, I believe Mr. Evans
29 has some questions.

James Aiken - Voir Dire

1 **BY THE COURT:** Mr. Evans.

2 **BY MR. EVANS:** Yes, sir.

3 VOIR DIRE EXAMINATION BY MR. EVANS:

4 Q. Mr. Aiken, just a few questions. What type of
5 educational background do you have in either the field of
6 psychology or psychiatry?

7 A. I have taken courses in my undergraduate studies
8 that had relationship to human behavior as well as received
9 training obviously within the Department of Corrections that
10 I have worked in, in relationship to future dangerousness as
11 well as the psychological history of individuals and to
12 evaluate that from a prison operational perspective and not a
13 clinical perspective.

14 Q. So you have no degrees in psychology or psychiatry?

15 A. That is correct, sir.

16 Q. And no formal training other than undergraduate
17 courses?

18 A. That is correct other than the formal training that
19 I received in my course of employment to interpret the
20 psychological records of inmate population from an
21 operational standpoint.

22 Q. And that is just basically as a prison official; is
23 that correct?

24 A. As a prison official and receiving the expertise
25 and training as well as teaching that to other correctional
26 professionals; yes, sir.

27 Q. You do not even claim to hold any expertise in
28 psychiatry or psychology, do you?

29 A. I'm not board certified; no, sir.

James Aiken - Voir Dire

1 Q. Well, not only are you not board certified, you
2 don't hold any kind of degrees in that, do you?

3 BY MR. DE GRUY: Your Honor, he hasn't been
4 tendered as an expert in psychology or psychiatry. I
5 don't understand the questions.

6 BY THE COURT: Well, certainly what you are
7 wanting him to testify to has some relationship to
8 those disciplines, so I'm going to let him voir dire.

9 BY MR. EVANS:

10 Q. You hold no degrees as a psychologist or
11 psychiatrist, do you?

12 A. That is correct, sir.

13 Q. How many times have you been with the Defendant?

14 A. One time, sir.

15 Q. For how long?

16 BY THE COURT: Now right now you are just voir
17 diring him or whether he is an expert or not.

18 BY MR. EVANS: All right, sir.

19 BY THE COURT: That is another question.

20 BY MR. EVANS: Okay. I didn't know if the Court
21 wanted to go ahead and cover that at this time or not.

22 BY THE COURT: No, not at this time.

23 BY MR. EVANS: All right. Your Honor, I think as
24 far as just voir diring on this part, that's all I
25 have.

26 BY THE COURT: What are you tendering him as?

27 BY MR. DE GRUY: As an expert in classification
28 of inmates and the determination of future
29 dangerousness and the operation of correctional

James Aiken - Continued Direct
facilities.

BY THE COURT: I think in light of his educational background and his past experience, he is qualified to testify in that field as an expert. However, his testimony in this case must not be generalizations but case specific.

BY MR. DE GRUY: Yes, Your Honor.

BY THE WITNESS: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION BY MR. DE GRUY:

Q. Mr. Aiken, with respect to this case, have you reviewed Mr. Flowers' prison and jail records?

A. Yes, I have.

Q. And have you interviewed Mr. Flowers?

A. Yes, I have.

Q. Are these the things you normally do in the classification process of an individual?

A. That is correct. The only possible exception of it is that I don't interview every inmate that I am making a classification decision on. And I have found that my proficiency in proper classifying inmate population was not diminished in relationship to whether I interviewed or didn't interview that particular inmate.

Q. Can you estimate over your career and maybe you have mentioned this; how many times you have classified inmates?

A. Literally thousands and thousands of times.

Q. And I believe you just testified that you don't always have an opportunity to interview in making that -- is that just done on records?

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2004-DP-00738-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

Curtis Giovanni Flowers v. State of Mississippi

Betty W. Sephton, Clerk

TRIAL COURT # : 2003-0071-CR

James Aiken - Continued Direct

1 A. What we do, yes, sir, is to review the official
2 records, those people that are qualified as well as
3 responsible for the safety and custody and security of the
4 inmate. What they say about the inmate, I value, yes.

5 Q. And I believe you testified you have developed and
6 evaluated classification systems?

7 A. That is correct. Not only -- and I don't want to
8 get too technical, but objective classification systems which
9 people commonly know as maximum security, medium security, or
10 minimum security as well as internal classification systems
11 in relationship to the person's assignment within a facility.

12 Q. Now you have been asked about your expertise in
13 psychology or psychiatry. In the corrections process, is it
14 normal to rely on records from those type of professionals?

15 A. It is normal to review those records collectively
16 as well as other variables and make a determination in
17 relationship to operational aspects of a prison. But as far
18 having the clinical qualifications as a psychiatrist,
19 psychiatric evaluation, and making a diagnosis, no.

20 Q. So in all of these prisons that you have worked in
21 around the country and here in Mississippi, is it a
22 psychologist or a psychiatrist who determines classification,
23 or is it a corrections professional?

24 A. Corrections professional.

25 Q. And you have already mentioned that you reviewed
26 the behavioral records of Mr. Flowers. Did you also, did you
27 review any medical records?

28 A. Yes, I did.

29 Q. And did that include psychological testing, or do

James Aiken - Continued Direct

1 you know?

2 A. If I remember correctly, it did have some reference
3 to some psychological issues such as attempted suicide or
4 something of that nature; yes, sir.

5 Q. He was evaluated while, when he was taken into the
6 system previously?

7 A. Yes, sir. It's a common component of a
8 classification process to look at some type of psychological
9 status of an inmate coming into the system.

10 Q. What is the better predictor of future
11 institutional behavior, behavior in the community prior to
12 incarceration or behavior while incarcerated?

13 A. In laymen's terms your community behavior is a
14 better predictor of future community behavior. Your prison
15 behavior is a better predictor of your future prison
16 behavior.

17 Q. From your review of the records, can you tell us
18 how long Mr. Flowers was institutionalized?

19 A. For at least seven years, six or seven years, yes.

20 Q. And in that time has he spent most of that time in
21 what is called close security?

22 A. That is correct.

23 Q. Could you tell us what close security is?

24 A. Close security is a custom. You have maximum
25 security; then you have close security, and it's a highly
26 supervised environment. It's a very high secure environment
27 where staff has total control, where staff always has a
28 visual line of sight to you and know your whereabouts 24
29 hours a day, seven days a week. And usually in this

James Aiken - Continued Direct

1 environment you are housed with very dangerous, predatorial,
2 violent inmate population.

3 Q. Can you tell us how many significant rule
4 violations the average close security inmate would have?

5 BY MR. EVANS: Your Honor, that is not relevant.

6 BY THE COURT: I'm sorry; I didn't hear your
7 question.

8 BY MR. DE GRUY: I'm asking him if based on his
9 experience, he could tell me what an average or
10 typical number of significant rule violations for a
11 closed security inmate?

12 BY MR. EVANS: That can't have any relevance to
13 this--

14 BY MR. DE GRUY: -- It absolutely does because
15 otherwise the jury is going to hear about Mr. Flowers
16 in a vacuum. They won't know what context to put in
17 his particular record.

18 BY THE COURT: Okay. I will allow it.

19 BY THE WITNESS:

20 A. Would you mind repeating the question, please.

21 Q. Yes. Can you tell us how many significant rule
22 violations the average or the typical close security inmate
23 would have?

24 A. It would not be uncommon for an inmate in a maximum
25 or close security to have 30, 40, 50 write-ups over a period
26 of time of five to seven or ten years. And the reason why is
27 not necessarily the person is bad, but he is constantly under
28 supervision. And people in these environments that are
29 supervising these environments, they document everything.

James Aiken - Continued Direct

1 Every rule violation, every incident is documented.

2 Q. In reviewing the files of Mr. Flowers over his
3 years in jail and in prison and particularly, in prison; that
4 is where he has been in close security. How many significant
5 disciplinary violations has he had?

6 A. Zero.

7 Q. Is that unusual?

8 A. That is exceptional to say the least. It's a
9 miracle for a person to be able to live in this very
10 volatile, dangerous environment with constant supervision
11 from security staff and not be written up or documented for
12 any violation or rules regulations, policy procedures, or
13 criminal violations while incarcerated.

14 Q. And you said you interviewed Mr. Flowers as part of
15 the, what would be the classification process. What did you
16 learn about him from that interview?

17 A. The purpose of my interview is to further validate
18 what I have already read in the records. Also, it was of
19 great interest to me to see this type of person that it was
20 disciplinary free for such a period of time within this close
21 environment because I quite honestly, have not seen anyone I
22 don't think, maybe one or two in my whole career that has
23 survived like that. And I found an individual that responded
24 with all respect, an individual that knew in a prison
25 environment you follow the rules and regulations and you do
26 what you were told when you were told to do it. As well as
27 to understand that other people around you, and this is from
28 Mr. Flowers to which is further validated in the record, you
29 just suck it up, and you take it. You take throwing cold

James Aiken - Continued Direct

1 water or hot water on you, and you don't say anything.

2 BY MR. EVANS: Your Honor, I object. That is not
3 proper, and he knows it's not.

4 BY THE COURT: Sustained unless it is backed up
5 by some evidence. There is nothing in this record
6 that would indicate that occurred.

7 BY MR. DE GRUY:

8 Q. Mr. Aiken, we will move on. But what you are
9 testifying to is based on your interview and your review of
10 the records?

11 A. That is correct. What I received directly from
12 Mr. Flowers on last evening.

13 Q. And I will move on to the next question. You are
14 familiar with the Mississippi classification system?

15 A. Yes, I have familiarity with it, and it's not
16 unusual with other classification systems within the United
17 States.

18 Q. Is there a certain level of security a person would
19 receive based on the crime of conviction?

20 A. Yes. And what that basically means with
21 Mr. Flowers is I don't care how good he is. I don't care how
22 he complies with the rules and regulations. His community
23 behavior, the criminal acts in which he has been convicted of
24 will prevent him from being exposed to the community again.
25 And that is forever, as long as he is living. It prevents
26 him no matter how good he is from going to a minimum security
27 or trying to get him back into the community because that is
28 taken off the table now. He is in prison not for
29 rehabilitation--

James Aiken - Continued Direct

1 BY MR. EVANS: -- Your Honor, again I'm going to
2 have to object--

3 BY THE WITNESS: --He is in prison for
4 incapacitation--

5 BY MR. EVANS: This is directly relation to
6 Wilcher. It is not proper. It is irrelevant to what
7 we are doing here.

8 BY THE COURT: That is sustained as to that type
9 of testimony.

10 BY MR. DE GRUY: I'm sorry, Your Honor.

11 BY MR. DE GRUY:

12 Q. Now you are talking about where Mr. Flowers, not in
13 general, where Mr. Flowers, where his classification falls.

14 BY MR. EVANS: Same objection on relevance.

15 BY THE COURT: That is sustained.

16 BY MR. DE GRUY: I think it goes directly to
17 future dangerousness.

18 BY THE COURT: Well, it flies right in the face
19 of the case law, Mr. de Gruy, also in relation to that
20 specific part of his testimony about sentencing and
21 what that means, I mean what that sentence means.

22 BY MR. DE GRUY: Your Honor, certainly everyone
23 would agree that the only options are death or life
24 without parole. So that is--

25 BY MR. EVANS: -- Your Honor, I would ask that he
26 ask questions and not testify at this point.

27 BY THE COURT: I have sustained the objection.
28 Let's move on.

29 BY MR. DE GRUY: Your Honor, just so I am clear

James Aiken - Continued Direct

1 on this, I'm not going to be allowed to ask this
2 witness about what maximum security conditions are?

3 **BY THE COURT:** No, I didn't say that.

4 BY MR. DE GRUY:

5 Q. Okay. Could you describe to us -- you have said
6 that Mr. Flowers would be placed in maximum security. Could
7 you describe for us what maximum security is?

8 A. Yes. Maximum security is an environment that is
9 super secure. Of course, we know about the fences and the
10 gun towers as well as the correctional staff that are
11 specially trained to manage this population. They have the
12 equipment; they have the training to control this individual
13 in just about any behavior this individual would possibly
14 demonstrate. Additionally, they are authorized to use lethal
15 force if required; that is; they can kill an inmate if that
16 inmate does not conform to a certain standard of behavior if
17 required. Also, they have total control as to where that
18 inmate goes, what that inmate eats, who that inmate talks to.
19 They can go through his personal belongings. They can go
20 through his personal body, if required, to insure that this
21 individual is safe as well as will not pose a future
22 dangerousness to other inmate population, staff, as well as
23 the community.

24 Q. If you were the warden supervising Curtis Flowers
25 in prison under a sentence of life without parole, would
26 Curtis be a person that you would have concerns for your
27 staff or anyone else's safety?

28 A. No, sir.

29 **BY MR. EVANS:** Your Honor, I don't think that is

James Aiken - DIRECT - CROSS

1 relevant.

2 BY THE COURT: I think in the light of the way I
3 qualified him, he can -- that would be a question
4 about future behavior.

5 BY THE WITNESS:

6 A. The answer to that question is yes. I would feel
7 very comfortable keeping this individual in my prison as the
8 warden without him posing a risk of harm to staff, inmates,
9 as well as the general community, and I have supervised
10 people like that for many years.

11 BY MR. DE GRUY: I have no further questions.

12 CROSS-EXAMINATION BY MR. EVANS:

13 Q. How many times did you say you have talked to the
14 Defendant?

15 A. One time, sir.

16 Q. When was that?

17 A. Last evening.

18 Q. For how long?

19 A. I would say 40 minutes at the max.

20 Q. So you are basing your information on him on a 40
21 minute interview?

22 A. That is not correct, sir.

23 Q. Well, how many other times have you talked to him?

24 A. I didn't base my opinion on just an interview.

25 Q. How many other times have you talked to him?

26 A. None.

27 Q. How many other inmates in maximum security at
28 Parchman have you checked records?

29 A. I have not reviewed individual records of inmates

James Aiken - CROSS

1 at Parchman.

2 Q. Oh, so you don't know whether anybody else over
3 there has any violations or not then, do you?

4 A. Not from that standpoint, sir, but in my being here
5 and providing technical assistance, it is of personal
6 knowledge that inmates that are in that type of facility have
7 a number of write-ups, at least a certain segment of that
8 population.

9 Q. Mississippi Penitentiary at Parchman, how many of
10 them there have you checked their records?

11 A. I have not checked their records, sir.

12 Q. And you are attempting to guess at what his future
13 dangerousness is; is that right?

14 A. No, sir. I am not guessing.

15 Q. Oh, you are not; you know? You can read minds?

16 A. No, sir. What we are saying in this profession is
17 no, we cannot predict human behavior in absolute terms. I
18 don't think anyone can do that. But what I am saying is that
19 we have gotten very proficient at better predicting human
20 behavior.

21 Q. Of course, you don't predict it at Parchman, do
22 you?

23 A. No, sir.

24 Q. In your evaluation, what you have been furnished to
25 look at, were you told about the facts of this crime?

26 A. Yes, sir.

27 Q. Were you told that four innocent individuals were
28 shot in the head and murdered?

29 A. Yes, sir.

James Aiken - CROSS

1 **BY MR. EVANS:** One second, Your Honor.

2 (Mr. Evans gets out easel and puts boards of
3 pictures on them.)

4 Q. I want to show you several different photographs.
5 To start with I will show you Exhibit 16A, 17A, 19A, 18A,
6 12A, 15A, 13A, 14A, 21A, 20A, 23A, and 22A. And I will ask
7 that you look at these photographs if you would?

8 **BY THE WITNESS:** Your Honor, may I have
9 permission to walk over and look at them?

10 **BY THE COURT:** Yes, sir.

11 **BY THE WITNESS:** Thank you.

12 (Long pause while witness walks over to
13 photographs, looks at them, and then resumes witness stand.)

14 **BY MR. EVANS:**

15 Q. Have you had an opportunity to look at those
16 pictures?

17 A. Yes, sir.

18 Q. Can you tell me how you can say that somebody that
19 can commit crimes like this would not be future dangerous?

20 A. To the community, yes, sir. In a prison
21 environment, I can manage that type of population.

22 Q. You can?

23 A. When I say I, I'm talking about correctional
24 facilities throughout the United States can manage this type
25 of population, especially when you look at his particular
26 record within a correctional environment.

27 Q. It's different when you have got somebody watching
28 you all the time, isn't it?

29 A. Yes, sir.

James Aiken - CROSS

1 Q. Would you agree with me that a person that could
2 commit that type of crime is going to be always dangerous?

3 A. To the community, yes, sir.

4 BY MR. EVANS: Your Honor, I have nothing further
5 of this witness.

6 BY MR. DE GRUY: No questions, Your Honor.

7 BY THE COURT: Is he finally excused?

8 BY MR. DE GRUY: Yes, he is finally excused.

9 BY THE COURT: You are free to go, sir.

10 BY THE WITNESS: Thank you, sir.

11 WITNESS EXCUSED.

12 BY THE COURT: Who will you have next?

13 BY MR. DE GRUY: Your Honor, the Defense rests.

14 DEFENDANT RESTS ON SENTENCING PHASE.

15 BY THE COURT: Anything else, Mr. Evans?

16 BY MR. EVANS: No, sir.

17 BOTH SIDES FINALLY REST.

18 BY THE COURT: Ladies and gentlemen, that
19 completes the testimony at this stage of the trial. I
20 will ask you to go to the jury room. I have to
21 consider some instructions to give you before the
22 lawyers argue this case as we did in the first phase
23 of the trial. These will take me a little time, so I
24 will call you when we get it done, and we will come
25 back, and I will read them to you, and they can argue
26 the case.

27 JURY LEFT THE COURTROOM.

28 (CONSIDERATION OF JURY INSTRUCTIONS FOR THE
29 SENTENCING PHASE WITH THE JURY OUT AS FOLLOWS:)

Consideration of Instructions - JURY OUT

1 **BY THE COURT:** Do I even have y'all's
2 instructions? I don't think I do.

3 **BY MR. HILL:** These are as good a state as I can
4 get them in at this time.

5 **BY MR. DE GRUY:** Do you have copies for me?

6 (State's and Defense Counsel confer out of the
7 hearing of the Court Reporter.)

8 SENTENCING INSTRUCTION NO. 1: **BY THE COURT:** Okay,
9 in relation to the State's sentencing instruction number 1,
10 there are four of them, I think. Well, I know there are. I
11 think they will all contain the same language. What do you
12 say Mr. de Gruy? I know they have got, as far as mitigating
13 circumstances, they have got to have some discussion, but
14 what about the rest of it?

15 **BY MR. DE GRUY:** First, we have submitted DS-1A
16 through D which it's our position that is a correct statement
17 of the law. It is essentially the same as the one they have
18 proposed, and that is the instruction that we are asking for.
19 But as to this, this instruction, our first objection is on
20 the listing of the aggravating circumstances. I'm sorry;
21 would you like me to stand to argue?

22 **BY THE COURT:** That--

23 **BY MR. DE GRUY:** I apologize.

24 **BY THE COURT:** That is all right.

25 **BY MR. DE GRUY:** They have condensed two
26 statutory aggravators into one and enumerated it as one
27 aggravator. The capital offense was committed for pecuniary
28 gain. That is an aggravating circumstance under the statute.
29 That the capital offense was committed during the course of a

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1 robbery is a second, a separate aggravating circumstance.

2 The Mississippi Supreme Court has clearly said you can't give
3 the two together, and therefore, if you can't give them
4 together enumerated as one and two, you shouldn't be able to
5 give them together in one instruction. And we have statutory
6 aggravating circumstances. They are limited to statutory
7 aggravating circumstances, and they must follow the language
8 of that statute, and they can't get around the willing rule
9 by combining them in one sentence.

10 **BY MR. EVANS:** Your Honor, specifically on that,
11 this is the way that our State Supreme Court has directed
12 that it be given. They are saying that it should not be
13 given separately; they should be given together.
14 Specifically, in a murder for robbery case, the aggravating
15 circumstance should read: "The capital offense was committed
16 for pecuniary gain during the course of a robbery." Simons
17 v. State, 805 So.2d 452; Turner v. State, 732 So.2d 937;
18 Irving v. State, 441 So.2d 846. And a long line of cases
19 specifically state that that is the way that the aggravating
20 factors should be given.

21 **BY THE COURT:** That's what the law says.

22 **BY MR. DE GRUY:** Your Honor, so the record is
23 clear, our objection is based on the Eighth and Fourteenth
24 Amendment as well as the state constitution, and our position
25 is as previously stated.

26 **BY THE COURT:** Okay. But the case law is that it
27 should not be done the way you have indicated, that it should
28 be done in the way this is done.

29 **BY MR. DE GRUY:** So it's clear, I'm not

Consideration of Instructions - JURY OUT

1 advocating that it be listed as one and two. I am saying
2 they cannot be listed in the same case.

3 **BY THE COURT:** Okay. Well, that is not the law,
4 so that objection is overruled. Okay, is that the only
5 objection as to the aggravating circumstance?

6 **BY MR. DE GRUY:** No, Your Honor. The aggravating
7 circumstance that is listed here is not an aggravating
8 circumstance that was submitted in the prior trials. We
9 covered this at pretrial; that the aggravating circumstances
10 that were to be submitted were the aggravators that had been
11 previously submitted. And also, there is absolutely no
12 evidence that this offense was committed to avoid arrest.

13 **BY MR. EVANS:** Your Honor, specifically on that,
14 we did not go into that on the other trials because we
15 were -- I think we did on one of them, but it was because we
16 were trying separate cases. In this case we are trying all
17 four deaths together. The fact that all four people in the
18 store were killed, I think, is in itself evidence of the fact
19 that he was killing everybody there so that he wouldn't be
20 apprehended. There would be no witnesses left. So I think
21 specifically this aggravating circumstance has been covered
22 in the facts and is appropriate in this case.

23 **BY THE COURT:** It may be, but we have pretrial
24 motions on this case. And the motion was for the State to
25 designate what the aggravating factors were, and at that time
26 the statement was made by the State that the aggravating
27 factors would be the same as what it had been in the earlier
28 trials. And based on that, I don't think you can use it in
29 this case. They have no notice that you were going to use

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that until this time.

BY MR. EVANS: Your Honor, the law is clear in this state that we are not required to produce aggravating factors until the case is over and the Court can determine whether they were proven during the case. We covered that before. We told them that we would -- now I think I specifically stated that we were not required to prove them, that once the case was over, we would determine what we were going to use. I think we may have used that in one of the others; I'm not sure. I know it was submitted in discovery that it would be used in the other cases. And the law is clear that it's to be determined by the Court if it's a factor that came out in this trial.

BY MR. CARTER: Well, that doesn't reflect my memory, Your Honor, and I was at the hearing.

BY MR. EVANS: And the Court overruled their motion on that, Your Honor, specifically stating that it was something that had to be determined during the trial.

BY MR. CARTER: That doesn't reflect my memory either.

BY THE COURT: My memory is that the State made an affirmative statement at that time that they were going to use the aggravating circumstances or the aggravators that they used in the previous trials. If you have used it in a previous trial, I will allow you to use it in this trial. If you didn't, I'm not going to allow it. So y'all can determine that in a minute.

Okay. Mitigators. Well, was that all? I guess that was--

Consideration of Instructions - JURY OUT

1 **BY MR. DE GRUY:** --Yes, Your Honor.

2 **BY THE COURT:** There are no other aggravators.

3 **BY MR. DE GRUY:** Yes, Your Honor. We have
4 submitted in the, in our instruction a list of the mitigating
5 circumstances, and we have also, in the event the Court
6 refuses DS-1A through D, we have also submitted a list of
7 mitigating circumstances instruction listing mitigating
8 circumstances.

9 **BY THE COURT:** Okay, I'm going to use the form,
10 the long form that lists, tells the jury what they have to do
11 as designated in Sentencing Instruction for the State 1.
12 That lists the factors that they must consider, how they go
13 about it, which is essentially the same instruction that
14 y'all have submitted. In that I'm going to list the
15 aggravating circumstances that they can consider. I am going
16 to also list the Inman factors that they must consider, what
17 their different verdicts can be.

18 And also, I'm going to list in that the mitigators.
19 I am not going to give a separate instruction on the
20 mitigating factors. Whatever mitigating factors will be
21 submitted to the jury will be submitted in this instruction.
22 So I need to know which ones you want.

23 One, I will go over what you have got on your
24 instruction, and let's see where we are. "Curtis Flowers has
25 no history of prior criminal activity." The State has got no
26 objection to that one, do they?

27 **BY MR. EVANS:** No, sir.

28 **BY THE COURT:** Okay. The next one, "Mr. Flowers
29 has an excellent prison record." The only testimony we have

Consideration of Instructions - JURY OUT

1 about that one way or another is that he does not have any
2 violations while he was in there.

3 BY MR. EVANS: And--

4 BY THE COURT: -- Whether excellent is a correct
5 statement is another story.

6 BY MR. EVANS: And I don't know that anybody has
7 actually said that they have seen his record.

8 BY THE COURT: No, I think Mr. Aiken said he had
9 seen--

10 BY MR. DE GRUY: --We had testimony this morning.

11 BY THE COURT: Yeah, he did that.

12 BY MR. EVANS: Well, if you believe him.

13 BY THE COURT: Well, that is for the jury.

14 BY MR. EVANS: I think it should at least reflect
15 the area that he said that he has no record of rules
16 violations or something like that.

17 BY THE COURT: I think that is what his testimony
18 was. We do not know what other records there might be in
19 relation to his prison record where you could necessarily
20 describe it as excellent. You could describe what he said,
21 what his examination showed. It will be up to the jury to
22 determine whether that is excellent or not. And I don't
23 believe he testified it was excellent. He just testified it
24 was exceptional and that he had no rules violations. So I
25 will submit it with that, amended to that form.

26 BY MR. DE GRUY: We would -- so the Court is
27 saying we can substitute the word "exceptional"?

28 BY THE COURT: Well, no.

29 BY MR. DE GRUY: Well, that is what he testified

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to.

BY MR. EVANS: Which that is--

BY THE COURT: -- Well, no, I don't think that is exactly what he said. He said he had never seen many like that, and he might have seen one or two in his life. What he said was, he testified to that; that what he testified to was that he had no rules violation in the six or seven years that he was there, and he found -- you can put in there that he found that -- he found to be unique, I guess would be a description of it.

BY MR. EVANS: And again, Your Honor, that is based entirely on his opinion, which I think is not proper. He can testify what the record is, but I think his opinion would not be a proper thing to submit to this jury.

BY THE COURT: He was qualified as an expert. He has the right to give his opinion as to whether or not that is a good record or a bad record. He did not testify it was excellent. He probably did, you probably could get it to where it was good or bad.

BY MR. EVANS: I have no objection to putting in there that he has had a good prison record.

BY THE COURT: With no rules violations. How about that?

BY MR. EVANS: I do not object to that.

BY MR. DE GRUY: Okay.

BY THE COURT: All right. Are y'all making notes?

(No audible response from either counsel.)

BY THE COURT: In the next one, I think the last

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1 one, I think what is in evidence is that he does follow the
2 rules and regulations of prison. I don't know that there is
3 anything in the record that he is willing to work or that he
4 helps others in the prison.

5 **BY MR. EVANS:** Even further, Your Honor,
6 basically the way I understood the testimony is he does what
7 he is told because he has no choice.

8 **BY THE COURT:** Well, there again that's -- but
9 it's something for the jury to evaluate there. That's their
10 province. I'm just talking about what the facts show, and
11 that is an evaluation of the facts. I think what needs to
12 come out is "willing to work" because it's not, there is no
13 proof to that effect. And "he helps others in the prison"; I
14 don't recall any testimony to that effect. Other than that,
15 I think that--

16 **BY MR. HILL:** -- Aren't "B" and "C" then, Your
17 Honor, exactly the same?

18 **BY THE COURT:** But I'm going to allow both. Now,
19 how about "D"? You couldn't make an argument on that basis,
20 either one of you.

21 **BY MR. EVANS:** I don't think it's an appropriate
22 mitigator. I think it's something he can argue, but I do not
23 think it's an appropriate mitigator.

24 **BY THE COURT:** Well, there is some case law to
25 the effect you can't argue.

26 **BY MR. EVANS:** Yes, sir. And if even the Court
27 allowed him to argue it, I don't think it's a proper
28 mitigator.

29 (State's Counsel confer briefly.)

Consideration of Instructions - JURY OUT

1 **BY MR. EVANS:** Yeah. The instruction itself, I
2 think--

3 **BY THE COURT:** -- where it has the life
4 imprisonment stuff?

5 **BY MR. EVANS:** Yes, sir.

6 **BY THE COURT:** Okay. As one of the verdict
7 forms?

8 **BY MR. EVANS:** Yes, sir.

9 **BY THE COURT:** Okay. I'm not going to allow that
10 as a mitigator. "E" is okay and "F" and "G". I don't see
11 any problem there.

12 **BY MR. EVANS:** Your Honor, the only problem I
13 have with "G" is there is nothing in the record that
14 indicates that any circumstances of the crime would be a
15 mitigator.

16 **BY MR. DE GRUY:** I think that is the catch all
17 language.

18 **BY THE COURT:** I think it is too.

19 **BY MR. EVANS:** I will withdraw it.

20 **BY THE COURT:** As a matter of fact, that is
21 verbatim just almost as to what the catch all is. We have
22 included that in every one we have ever done. So that stays.
23 Okay. Any others that you want that are supported by the
24 evidence?

25 **BY MR. DE GRUY:** No, Your Honor. I think that
26 covers it.

27 **BY THE COURT:** Okay. Then that is the
28 instruction that I'm going to give with those amendments to
29 it. I would ask that we take a short recess while y'all get

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1 that instruction. There are four of them. When you get
2 those four in that form, then we will to go the others. How
3 about that?

4 **BY MR. EVANS:** Yes, sir.

5 **BY THE COURT:** Okay.

6 (DURING A RECESS FOR THE COURT REPORTER TO TYPE THE
7 NOW AMENDED SENTENCING INSTRUCTION 1, THE JURY WAS SENT TO
8 LUNCH. WHILE THEY WERE GONE, PROCEEDINGS CONTINUED IN OPEN
9 COURT WITH ALL COUNSEL AND THE DEFENDANT PRESENT BUT WITH THE
10 JURY STILL OUT:)

11 **BY MR. EVANS:** Before we go forward, there is
12 something I wanted to put on the instructions to make it
13 clear.

14 **BY THE COURT:** Okay.

15 **BY MR. EVANS:** As far as previous instructions
16 that have been given, the State in the instructions that I
17 have got that we had prepared for the first two trials; in
18 one of them we had prepared during the course of a robbery
19 for pecuniary gain, great risk of death to many people, and
20 to avoid apprehension. We had those three. In the other
21 one, great risk of death to many people and the robbery for
22 pecuniary gain. But to make sure that I was representing
23 things right for the Court, we called Judy Martin with the
24 AG's Office and asked her to look and make sure what was
25 actually submitted to the jury in both cases. And what was
26 submitted in both cases was robbery for pecuniary gain and
27 great risk of death to many people. All three of them had
28 been prepared, but that is the two that were submitted.

29 In this case I don't wish to use the one great risk

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1 of death to many people. The two that I would ask to use are
2 the robbery for pecuniary gain and to avoid arrest and
3 apprehension.

4 And I think, if I'm not mistaken, all of this in
5 previous discovery, all three of them had been furnished in
6 previous discovery. Plus they were prepared in the original
7 instructions, but they were not submitted to the jury like
8 that. I just wanted to make sure that I don't misrepresent
9 anything to the Court on that.

10 **BY MR. DE GRUY:** We maintain our objection to
11 them.

12 **BY MR. CARTER:** And I probably did the most
13 intensive reading of the file, and the only two that I'm
14 aware of are the two that we discussed when we were in the
15 motion hearing that day.

16 **BY MR. EVANS:** And I would have to go back and
17 look. It might take five minutes; it may take a long time,
18 but I'm if I'm not mistaken, these were all three furnished
19 in discovery.

20 **BY THE COURT:** Okay. I need to see -- there was
21 a motion for you to divulge which ones that you were going to
22 rely on. I know that there was some discussions about what
23 went on at the other trial. I do not know what you replied,
24 what your reply to that motion was or what your discovery
25 showed in that regard. If, in fact, you put something in
26 written discovery where you said that that would be one of
27 the factors that you might consider, that might change the
28 situation. If that is not there though, I think they are
29 entitled to rely on the communications we had at that

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1 hearing.

2 I agree with you that the facts can develop
3 different things, but in preparation for trial, once they
4 file that motion, they ought to be entitled to at least know
5 that you might do something else. So I need to see what you
6 did in relation to that discovery.

7 BY MR. EVANS: Yes, sir. And if I can't find it
8 real quick, then we will just go on. I'm not going to waste
9 the Court's time.

10 BY THE COURT: Okay, all right. And if he cannot
11 produce that and we have to strike it, is it okay, folks, if
12 we just strike that out, black it out rather than having to
13 go through typing all this again?

14 BY MR. DE GRUY: Yes, Your Honor.

15 BY THE COURT: Okay, all right. Y'all, somebody
16 sitting there in that back, I do not have the jury here, and
17 I'm discussing these things. Do not let them come in the
18 courtroom until you have told me that they are here. Okay?

19 (Off the record briefly. Mr. Evans reenters and
20 hands something to the Court.)

21 BY THE COURT: Okay, these are notices that were
22 provided prior to the first trial? Is that correct?

23 BY MR. EVANS: Yes, sir.

24 BY THE COURT: Were these same things provided to
25 these gentlemen for this trial?

26 BY MR. EVANS: No, sir, because the Court ordered
27 that it wasn't necessary. The Court overruled their motion
28 that we have to provide aggravators.

29 BY MS. FERRARO: Your Honor, I was at that

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1 hearing making notes, and I remember we filed a motion asking
2 about that specific aggravator of the avoiding arrest
3 aggravator, and Mr. Evans said he was only going to use the
4 two aggravators that he used previously. And you said that
5 was your ruling, is that he was going to use the ones he had
6 already used. And that's my recollection of the hearing, and
7 I was only making notes in the argument. I don't know if
8 that is true. You might want to check the transcript.

9 **BY THE COURT:** And nobody drew a written order
10 for me to sign, did they?

11 **BY MR. CARTER:** No, sir.

12 **BY THE COURT:** I'm going to stand by my original
13 ruling, and I'm going to delete it from these instructions.
14 (Pause) Okay, now I don't know that everybody has looked at
15 all these since we have done all the typing and whatever. So
16 I will give them back to y'all if y'all want to--

17 **BY MR. EVANS:** You have seen them, didn't you,
18 Clyde?

19 **BY THE COURT:** Y'all have seen them, I guess,
20 because you were in there when Linda was typing them.

21 **BY MR. EVANS:** Yes, sir.

22 **BY MR. DE GRUY:** We haven't seen them.

23 **BY THE COURT:** The deletion is I deleted number 2
24 as far as an aggravator.

25 **BY THE COURT REPORTER:** I put copies on both of
26 their tables.

27 **BY MR. DE GRUY:** Yeah, we have copies.

28 **BY THE COURT:** Okay, all right. Then, Mr. de
29 Gruy, have you stated all of your objections to SS-1A, SS-1B,

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SS-1C, and SS-1D?

BY MR. DE GRUY: The only change we would request, without waiving the instruction we have previously submitted, is that in the first -- the second sentence, "You must now decide whether the Defendant will be sentenced to death or life imprisonment," we would ask that "without parole" be inserted there.

BY THE COURT: Well, the form of their verdict is in this instruction, and if they return life imprisonment, the only form that they can return is that form of the verdict, and it says "life without parole." So I think that sufficiently covers it. If they return a verdict other than that, I'm going to send them back to return that verdict because they have only got two that they can return. I'm going to give those four instructions.

COURT INSTRUCTIONS C-2, C-3, C-4: **BY THE COURT:** Okay, I don't think you have seen these. These are stock sentencing instructions.

BY MR. DE GRUY: Would be 2, 3 and 4?

BY THE COURT: Yeah, 2, 3 and 4. One is adopting the testimony. Okay, you have got them?

BY MR. DE GRUY: Yes.

BY THE COURT: Then it's the foreman and then the mere counting instruction. Any objection to those?

BY MR. DE GRUY: On C-3, the foreman instruction, our only request would be a final sentence that basically tells them the same thing. Upon this form that has been approved by the Supreme Court, whatever verdict is returned should be signed by the foreman, and therefore, there should

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1 be a sentence, In the event you unanimously find that the
2 Defendant should be sentenced to life without parole, the
3 foreman shall, and language there. If you look at the SS-1
4 instructions.

5 **BY THE COURT:** Yeah, I know. Right. How about
6 instead of "the," "any"?

7 **BY MR. DE GRUY:** That's all right.

8 **BY THE COURT:** That would work? The last two
9 words. "And the foreman shall thereafter affix his or her
10 signature to any verdict."

11 **BY MR. DE GRUY:** I think that the sentence is
12 referring only to the death verdict. It specifically says
13 that.

14 **BY THE COURT:** (Pause) There again, that
15 instruction gives them the three things that they can find,
16 and it has a line for them to sign. And certainly, there are
17 significant things they have to find in relation to the death
18 penalty. In relation to the other verdicts, all they have to
19 do is sign it, and I'm not going to confuse them with all
20 that. I think if you read the instructions as a whole, it
21 clearly advises what to do. I don't have any problem to
22 changing "the" to "any."

23 **BY MR. DE GRUY:** We will accept that without
24 waiving our request for the full sentence.

25 **BY THE COURT:** Okay. How would it be prejudiced
26 by not doing the other way?

27 **BY MR. DE GRUY:** That was the whole point that
28 the Supreme Court discussed in the old form of the verdict
29 that only had one signature line, that the jury may not

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1 consider any other option. It would lead the jury or may
2 lead a jury in following the instructions mechanically to
3 only return a death verdict. And that was the rational in
4 the Court in which they said in the future, provide signature
5 lines for all.

6 **BY THE COURT:** Okay, well, what about if we
7 change it this way then. If you unanimously reach a verdict
8 on sentencing, the foreman shall cause the verdict to be
9 written in the form and manner prescribed in Schedule 1, and
10 the foreman shall thereafter affix his or her signature to
11 the verdict?

12 **BY MR. DE GRUY:** I have no objection to that.

13 **BY THE COURT:** How about that, Mr. Evans?

14 **BY MR. EVANS:** No objection.

15 **BY THE COURT:** All right, let's see if I can
16 remember what I just said. (Pause while the Court writes.)
17 Let me read it back to you again. "If you unanimously reach
18 a verdict as to sentence, the foreman shall cause the verdict
19 to be written in the form and manner prescribed in Sentencing
20 Instruction 1, and the foreman shall thereafter affix his or
21 her signature to the verdict"?

22 **BY MR. DE GRUY:** We have no objection to that.

23 **BY MR. EVANS:** It is fine.

24 **BY THE COURT:** Okay. All right, Sentencing
25 Instruction 2 is given. 3 is going to be given as amended.
26 4 is given. And that is, for the record, that is C-2, C-3
27 and C-4.

28 **BY MR. DE GRUY:** Your Honor, I understand the
29 ruling on the first, on the long instruction that we were

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1 talking about, but just so the record is clear. We would
2 also ask that "without parole" be inserted after "life
3 imprisonment" in this instruction. I understand that you
4 have ruled on that, but I--

5 **BY THE COURT:** -- Okay, my ruling is that it is
6 included in there and that they are adequately instructed as
7 to what their verdict must be and adequately instructed as to
8 what the penalties are. Was that all-- I have got too many
9 papers up here. What else did y'all have? Or was that it?

10 **BY MR. EVANS:** I think that was it.

11 **BY THE COURT:** Okay. I will go over the verdict
12 form in a minute.

13 INSTRUCTION NO. DS-1A, DS-1B, DS-1C and DS-1D:

14 **BY THE COURT:** Okay, Defendant's S-1A is refused as repetitive
15 of the Court's sentencing instruction, as is Defendant's
16 S-1B, C and D.

17 INSTRUCTION NO. DS-2: **BY THE COURT:** What do y'all
18 say to DS-2?

19 **BY MR. EVANS:** Your Honor, the only problem, I
20 don't like the part in here and I don't think it's
21 appropriate where it says, "I cannot stress to you enough
22 that the focus of your deliberations during this phase is not
23 the same as an ordinary case." I don't think that would be
24 appropriate.

25 **BY THE COURT:** Mr. de Gruy. Do you have any
26 argument?

27 **BY MR. DE GRUY:** No, sir.

28 **BY THE COURT:** Okay, my job is to instruct them
29 on the law. My job is not to make commentary on the death

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1 penalty, and that's what this instruction does. And the rest
2 of the instruction is covered by Sentencing Instruction
3 number 1. Therefore, it's refused.

4 INSTRUCTION NO. DS-3: BY MR. EVANS: DS-3, I would
5 object to because it's the Court bringing race into this
6 case, and race has no bearing in the court system.

7 **BY THE COURT:** There is some specific case law
8 about that is not to be injected into the case. I have
9 instructed them at the initial phase of this trial about bias
10 or prejudice, and I'm going to refuse that instruction.

11 INSTRUCTION NO. DS-4: BY MR. EVANS: Object to D-4
12 as being an improper comment. There is a presumption of
13 innocence. There is no presumption that there are no
14 aggravating circumstances because once we have proven the
15 fact that it was a capital murder, there automatically is an
16 aggravating circumstance, so there is no presumption. The
17 only thing that is important here is what the burden is on
18 the jury, and that is covered by the instructions.

19 **BY THE COURT:** Any response?

20 **BY MR. DE GRUY:** Well, we think the aggravators
21 do have to be found again beyond a reasonable doubt by this
22 jury.

23 **BY THE COURT:** But isn't that in Sentencing
24 Instruction number 1 --

25 **BY MR. EVANS:** --Yes, sir--

26 **BY THE COURT:** --as to exactly what they must do
27 and the burden of proof that they must have?

28 **BY MR. EVANS:** Yes, sir.

29 **BY THE COURT:** Okay. I think the Sentencing

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1 Instruction number 1 -- well, the first four state the law
2 and tells the jury what they must do and what their
3 obligations are and what the law is. And that is refused as
4 being repetitive.

5 INSTRUCTION NO. DS-5: BY MR. EVANS: DS-5 now
6 should just have one aggravating circumstance instead of two.

7 BY MR. DE GRUY: I agree with that.

8 (Pause while the Court marks on the instruction.)

9 BY THE COURT: Any objection to the thing, the
10 amendment to that instruction? D-5, DS-5?

11 BY MR. EVANS: No, sir. I don't think I have any
12 objection to the rest of it. Of course, that is not the only
13 thing they are to consider because all of the evidence from
14 the first phase has been introduced. I think because of
15 that, since it's already, I think that has already been given
16 in the Court's instruction. I think it might be misleading
17 but.

18 BY THE COURT: I'm going to give it, but it needs
19 to be given in this form. "I have previously read to you the
20 one aggravating circumstance which the law permits you to
21 consider. This is the only aggravating circumstance you may
22 consider. However, before you may consider this factor, you
23 must find that factor is established by the evidence beyond a
24 reasonable doubt."

25 BY MR. EVANS: Now I think that is a correct
26 statement of the law.

27 BY THE COURT: Okay, and you have no objection to
28 those amendments, I am sure?

29 BY MR. DE GRUY: No, Your Honor.

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1 **BY THE COURT:** I'm going to give this one; I'm
2 going to give DS-5 as amended. We are going to have to
3 redraw it.

4 INSTRUCTION NO. DS-6: **BY THE COURT:** In light of
5 giving--

6 **BY MR. DE GRUY:** --Yeah, we will withdraw 6.

7 **BY THE COURT:** Okay.

8 INSTRUCTION NO. DS-7: **BY MR. EVANS:** I think that
9 all of how the procedure is already more properly covered in
10 the other sentencing instructions. And it's trying to
11 explain "reasonable doubt"--

12 **BY THE COURT:** I think DS-7 is repetitive. That
13 is refused. Also, I agree it does try to define "reasonable
14 doubt."

15 INSTRUCTION NO. DS-8: **BY MR. EVANS:** Your Honor, I
16 think this is misleading and improper. The Court -- I have
17 an instruction here that if they are requesting an
18 instruction on mitigating circumstances, has been approved
19 and given by this Court many times, and I would offer it.

20 (Hands to Defense Counsel.)

21 INSTRUCTION NO. DS-10 AND C-5: **BY MR. DE GRUY:**
22 That is essentially our DS-10. We have the word "individual"
23 underlined to stress that it is their individual decision
24 that the law requires.

25 (Mr. Hill hands a document to the Court.)

26 **BY MR. EVANS:** I think Blue v. State, 674--

27 **BY THE COURT:** -- As far as the underlining? I
28 don't allow any underlining.

29 **BY MR. DE GRUY:** Sir?

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1 **BY MR. EVANS:** No, I'm just talking about this
2 instruction. Blue v. State, 674 So.2d 1184, I think that is
3 the instruction that they said was appropriate if the defense
4 requests it.

5 **BY MR. DE GRUY:** And I think that is our DS-10
6 unless I missed a word somewhere.

7 **BY THE COURT:** Okay. Then except you have got
8 "individual" underlined, and I think that is inappropriate to
9 emphasize any part of the instruction. I'm going to give
10 this one that the State has submitted in lieu of DS-10
11 because there is no underlining of "individual" on there.
12 And let's see what I'm going to number it. For the sake of
13 the record, I will number that C-5. In light of that, I'm
14 going to refuse DS-8 and DS-10.

15 INSTRUCTION NO. DS-9: **BY MR. EVANS:** I think what
16 is in 9 is better covered by that other instruction also.

17 **BY THE COURT:** I think it's superfluous. I'm
18 going to refuse it. That is DS-9.

19 INSTRUCTION NO. DS-11: **BY THE COURT:** And I think
20 we have already covered mitigation. I have given a
21 mitigation instruction. DS-11 is refused, also on the basis
22 that "individual" is once again underlined.

23 INSTRUCTION NO. DS-12: **BY THE COURT:** DS-12 is
24 covered by the sentencing instructions given at the outset.
25 So therefore it's refused.

26 INSTRUCTION NO. DS-13: **BY THE COURT:** DS-14 [sic]
27 is a statement of the mitigating circumstances. It's a
28 restatement of them. They are contained in the first
29 sentencing instruction. Also, the ones contained in DS-13

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are not consistent with the ones that I granted, so it's refused.

INSTRUCTION NO. DS-14: **BY THE COURT:** Okay, what do you say to DS-14?

BY MR. EVANS: I would object to 14. I don't think it's a proper instruction for the Court to give. It would be the Court trying to predict what the legislature may do in the future.

BY THE COURT: Or tomorrow. I think it is covered in the Court's instructions. Life in prison without parole says what it says. It's refused.

INSTRUCTION NO. DS-15: **BY MR. EVANS:** I think 15 is, if I'm not mistaken, it's already covered in the Court's instructions.

BY THE COURT: It was covered in the original S-1 at the guilt phase. I don't know that there is any particular language in this sentencing instruction about that. It's a typical instruction that the Court gives at the first, as C-1. I'm going to give it. That is DS-15.

INSTRUCTION NO. DS-16: **BY THE COURT:** Okay, DS-16 is covered in the original sentencing instruction, of the State Sentencing Instruction 1A, B, C and D. Therefore, it's repetitious and it's refused.

INSTRUCTION NO. DS-17: **BY MR. EVANS:** The State would object to 17.

BY THE COURT: Right. They are advised of that in the sentencing instruction, the original sentencing instruction, State's Sentence Instruction 1A, B, C and D. And this is an unnecessary comment on what is in that

Consideration of Instructions - JURY OUT

instruction, so therefore it's refused. Okay.

BY MR. DE GRUY: Your Honor, just for the record, I don't believe that it tells the jury what happens if they don't agree in the sentencing instructions that have been granted. And this jury has never been told what would happen, and they should be.

BY THE COURT: Well, I don't know that that is the law. That sentencing instruction we are giving them is the sentencing instruction that has been approved by the Court. That is the one we are going to give, and I'm going to refuse this one. Okay, I have got two--

BY MR. EVANS: -- Also, Your Honor, just for the record, to put in the record; another objection is that it indicates to the jury that they have to do this in a certain time period, and I don't think that would be proper.

BY THE COURT: It gives them directions, inappropriate directions as to how they are to perform their duty. Okay. I have got to have two of these fixed.

(WHEREUPON, THE COURT REPORTER LEFT THE COURTROOM TO RETYPE TWO INSTRUCTIONS. THE COURT AND THE ATTORNEYS CONFERRED CONCERNING SENTENCING INSTRUCTION SS-1A, 1B, 1C, AND 1D WHILE THE COURT REPORTER WAS OUT OF THE COURTROOM BUT MADE THE FOLLOWING RECORD UPON HER RETURN WITH THE JURY STILL OUT:)

BY THE COURT: Let the record reflect that State Sentence Instructions 1A, B, C, and D have been amended. They have been amended in the following manner. On page 2 of each of those instructions, starting with the first new paragraph on that page, it will read as follows: "Consider

Consideration of Instructions - JURY OUT

1 only the following element of aggravation in determining
2 whether the death penalty should be imposed: The capital
3 offense was committed for pecuniary gain during the course of
4 a robbery. You must unanimously find, beyond a reasonable
5 doubt, that the preceding aggravating circumstance exists in
6 this case to return the death penalty. If this aggravating
7 circumstance is found not to exist, the death penalty may not
8 be imposed, and you shall write the following verdict on a
9 sheet of paper. 'We, the jury, find that the defendant
10 should be sentenced to life imprisonment without parole.'
11 If the above aggravating circumstance is found to exist
12 beyond a reasonable doubt, then you must consider whether
13 there are mitigating circumstances which outweigh the
14 aggravating circumstance."

15 That amendment was made on each of these
16 instructions. Is that right, gentlemen?

17 **BY MR. DE GRUY:** That's correct.

18 **BY MR. HILL:** That's correct, Your Honor.

19 **BY THE COURT:** You are satisfied with that form?

20 **BY MR. DE GRUY:** Yes, Your Honor.

21 **BY THE COURT:** Okay. Then each of those
22 instructions has been given by the Court. Instruction C-2 is
23 given as Instruction Number 2. C-3 is given as Instruction
24 number 3. C-4 is given as Instruction number 4. DS-5 is
25 given as Instruction number 5. C-5 is given as Instruction
26 number 6. And DS-15 is given as Instruction number 7. And
27 also, then will be attached to these instructions a verdict
28 form consistent with the form set forth in State Sentence
29 Instruction 1A, B, C, and D. And I understand there is no

Court Reads Instructions to Jury

1 objection to that verdict form? Is that correct?

2 **BY MR. DE GRUY:** No objection.

3 **BY THE COURT:** Okay. All right, we can file
4 these, and we can proceed.

5 JURY ENTERS THE COURTROOM.

6 **BY THE COURT:** Ladies and gentlemen, once again,
7 I must give you some instructions that apply to this phase of
8 the trial. There again, they are in writing, and you will be
9 able to take them to the jury room with you.

10 "You have found the defendant guilty of the crime
11 of capital murder of Bertha Tardy. You must now decide
12 whether the defendant will be sentenced to death or life
13 imprisonment. In reaching your decision, you may objectively
14 consider the detailed circumstances of the offense for which
15 the defendant was convicted, and the character and record of
16 the defendant himself. You should consider and weigh any
17 aggravating and mitigating circumstances, as set forth later
18 in this instruction, but you are cautioned not to be swayed
19 by mere sentiment, conjecture, sympathy, passion, prejudice,
20 public opinion, or public feeling.

21 To return the death penalty in this case, you must
22 first unanimously find from the evidence beyond a reasonable
23 doubt that one or more of the following facts existed: That
24 the defendant actually killed Bertha Tardy; That the
25 defendant attempted to kill Bertha Tardy; That the defendant
26 intended the killing of Bertha Tardy take place or; That the
27 defendant contemplated that lethal force would be employed.

28 Next to return the death penalty, you must find the
29 mitigating circumstances, those which tend to warrant the

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1 considered mitigating circumstances; Any other circumstance
2 or combination of circumstances of the crime or of the life
3 and character of Mr. Flowers which you believe should
4 mitigate in favor of a sentence of life imprisonment.

5 If you find from the evidence that one or more of
6 the preceding elements of mitigation exists, then you must
7 consider whether it outweighs or overcomes any aggravating
8 circumstances you previously found. In the event that you
9 find that the mitigating circumstances do not outweigh or
10 overcome the aggravating circumstance, you may impose the
11 death sentence. Should you find that the mitigating
12 circumstances outweigh or overcome the aggravating
13 circumstance, you shall not impose the death sentence.

14 The verdict you return must be written on a
15 separate sheet of paper signed by the foreman. Your verdict
16 should be written in one of the following forms:

17 We, the jury, unanimously find from the evidence
18 beyond a reasonable doubt that the following facts existed at
19 the time of the commission of the capital murder of Bertha
20 Tardy.

21 Here you list or itemize all facts found, if any, from the
22 list under Section A of this instruction which you
23 unanimously agree exists in this case beyond a reasonable
24 doubt.

25 Next we, the jury unanimously find that the
26 aggravating circumstance of:" And then you "List or itemize
27 all of the aggravating circumstances presented in Section B
28 of this instruction which you unanimously agree exist in this
29 case as to Bertha Tardy beyond a reasonable doubt.

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1 Exist beyond a reasonable doubt and is sufficient to impose
2 the death penalty and that there are insufficient mitigating
3 circumstances to outweigh the aggravating circumstance, and
4 we further find unanimously that the defendant should suffer
5 death."

6 It's a line for the foreman of the jury to sign.

7 Or "We, the jury, find that the defendant should be
8 sentenced to life imprisonment without parole." There again
9 there is a line for the foreman of the jury to sign.

10 Or "We, the jury, are unable to agree unanimously
11 on punishment." And there again there is a line for the
12 foreman to sign.

13 "You have found the defendant guilty of the crime
14 of capital murder of Robert Golden. You must now decide
15 whether the defendant will be sentenced to death or life
16 imprisonment. In reaching your decision, you may objectively
17 consider the detailed circumstances of the offense for which
18 the defendant was convicted, and the character and record of
19 the defendant himself. You should consider and weigh any
20 aggravating and mitigating circumstances, as set forth in
21 this instruction, but you are cautioned not to be swayed by
22 mere sentiment, conjecture, sympathy, passion, prejudice,
23 public opinion, or public feeling.

24 To return the death penalty in this case, you must
25 first unanimously find from the evidence beyond a reasonable
26 doubt that one or more of the following facts existed: That
27 the defendant actually killed Robert Golden; That the
28 defendant attempted to kill Robert Golden; That the defendant
29 intended the killing of Robert Golden take place or; That the

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defendant contemplated that lethal force would be employed.

Next to return the death penalty, you must find the mitigating circumstances, those which tend to warrant the less severe penalty of life imprisonment without parole, do not outweigh the aggravating circumstance which tend to warrant the death penalty.

Consider only the following element of aggravation in determining whether the death penalty should be imposed: The capital offense was committed for pecuniary gain during the course of a robbery.

You must unanimously find, beyond a reasonable doubt, that the preceding aggravating circumstance exists in this case to return the death penalty. If this aggravating circumstance is found not to exist, the death penalty may not be imposed, and you shall write the following verdict on a sheet of paper.

'We, the jury, find that the defendant should be sentenced to life imprisonment without parole.'

If the above aggravating circumstance is found to exist beyond a reasonable doubt, then you must consider whether there are mitigating circumstances which outweigh the aggravating circumstance. Consider the following elements of mitigation in determining whether the death penalty should not be imposed:

Curtis Flowers has no history of prior criminal activity; Mr. Flowers has a good prison record with no rules violations; Mr. Flowers follows the rules and regulations of the prison, does as he is told, and does not cause trouble for guards; Mr. Flowers has a loving, supporting family and

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1 many friends; Any and all factors relative to the background,
2 life, environment, and emotional makeup of Curtis Flowers,
3 which would be mitigating circumstances or could be
4 considered mitigating circumstances; Any other circumstance
5 or combination of circumstances of the crime or of the life
6 and character of Mr. Flowers which you believe should
7 mitigate in favor of a sentence of life imprisonment.

8 If you find from the evidence that one or more of
9 the preceding elements of mitigation exists, then you must
10 consider whether it or they outweigh or overcome any
11 aggravating circumstance you previously found. In the event
12 that you find that the mitigating circumstances do not
13 outweigh or overcome the aggravating circumstance, you may
14 impose the death sentence. Should you find that the
15 mitigating circumstances outweigh or overcome the aggravating
16 circumstance, you shall not impose the death sentence.

17 The verdict you return must be written on a
18 separate sheet of paper signed by the foreman. Your verdict
19 should be written in one of the following forms:

20 We, the jury, unanimously find from the evidence
21 beyond a reasonable doubt that the following facts existed at
22 the time of the commission of the capital murder of Robert
23 Golden.

24 List or itemize all facts found, if any, from the list under
25 Section A of this instruction which you unanimously agree
26 exists in this case beyond a reasonable doubt.

27 Next we, the jury unanimously find that the
28 aggravating circumstance of:" And you "List or itemize all
29 of the aggravating circumstances presented in Section B of

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1 this instruction which you unanimously agree exist in this
2 case as to Robert Golden beyond a reasonable doubt.
3 Exist beyond a reasonable doubt and is sufficient to impose
4 the death penalty and that there are insufficient mitigating
5 circumstances to outweigh the aggravating circumstance, and
6 we further find unanimously that the defendant should suffer
7 death."

8 The foreman should sign that verdict.

9 Or "We, the jury, find that the defendant should be
10 sentenced to life imprisonment without parole." The foreman
11 should sign that verdict.

12 Or "We, the jury, are unable to agree unanimously
13 on punishment." The foreman shall sign that verdict.

14 "You have found the defendant guilty of the crime
15 of capital murder of Carmen Rigby. You must now decide
16 whether the defendant will be sentenced to death or life
17 imprisonment. In reaching your decision, you may objectively
18 consider the detailed circumstances of the offense for which
19 the defendant was convicted, and the character and the record
20 of the defendant himself. You should consider and weigh any
21 aggravating and mitigating circumstances, as set forth later
22 in this instruction, but you are cautioned not to be swayed
23 by mere sentiment, conjecture, sympathy, passion, prejudice,
24 public opinion, or public feeling.

25 To return the death penalty in this case, you must
26 first unanimously find from the evidence beyond a reasonable
27 doubt that one or more of the following facts existed: That
28 the defendant actually killed Carmen Rigby; That the
29 defendant attempted to kill Carmen Rigby; That the defendant

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1 intended the killing of Carmen Rigby take place or; That the
2 defendant contemplated that lethal force would be employed.

3 Next to return the death penalty, you must find the
4 mitigating circumstances, those which tend to warrant the
5 less severe penalty of life imprisonment without parole, do
6 not outweigh the aggravating circumstances which tend to
7 warrant the death penalty.

8 Consider only the following element of aggravation
9 in determining whether the death penalty should be imposed:
10 The capital offense was committed for pecuniary gain during
11 the course of a robbery.

12 You must unanimously find, beyond a reasonable
13 doubt, that the preceding aggravating circumstance exists in
14 this case to return the death penalty. If this aggravating
15 circumstance is found not to exist, the death penalty may not
16 be imposed, and you shall write the following verdict on a
17 sheet of paper.

18 'We, the jury, find that the defendant should be
19 sentenced to life imprisonment without parole.'

20 If the above aggravating circumstance is found to
21 exist beyond a reasonable doubt, then you must consider
22 whether there are mitigating circumstances which outweigh the
23 aggravating circumstance. Consider the following elements of
24 mitigation in determining whether the death penalty should
25 not be imposed:

26 Curtis Flowers has no history of prior criminal
27 activity; Mr. Flowers has a good prison record with no rules
28 violations; Mr. Flowers follows the rules and regulations of
29 the prison, does as he is told, and does not cause trouble

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1 for guards; Mr. Flowers has a loving, supporting family and
2 many friends; Any and all factors relative to the background,
3 life, environment, and emotional makeup of Curtis Flowers,
4 which would be mitigating circumstances or could be
5 considered mitigating circumstances; Any other circumstance
6 or combination of circumstances of the crime or of the life
7 and character of Mr. Flowers which you believe should
8 mitigate in favor of a sentence of life imprisonment.

9 If you find from the evidence that one or more of
10 the preceding elements of mitigation exists, then you must
11 consider whether it or they outweigh or overcome any
12 aggravating circumstance you previously found. In the event
13 that you find that the mitigating circumstances do not
14 outweigh or overcome the aggravating circumstance, you may
15 impose the death sentence. Should you find that the
16 mitigating circumstances outweigh or overcome the aggravating
17 circumstance, you shall not impose the death sentence.

18 The verdict you return must be written on a
19 separate sheet of paper signed by the foreman. Your verdict
20 should be written in one of the following forms:

21 We, the jury, unanimously find from the evidence
22 beyond a reasonable doubt that the following facts existed at
23 the time of the commission of the capital murder of Carmen
24 Rigby.

25 List or itemize all facts found, if any, from the list under
26 Section A of this instruction which you unanimously agree
27 exists in this case beyond a reasonable doubt.

28 Next we, the jury unanimously find that the
29 aggravating circumstance of: List or itemize all of the

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1 aggravating circumstances presented in Section B of this
2 instruction which you unanimously agree exist in this case as
3 to Carmen Rigby beyond a reasonable doubt.

4 Exist beyond a reasonable doubt and is sufficient to impose
5 the death penalty and that there are insufficient mitigating
6 circumstances to outweigh the aggravating circumstance, and
7 we further find unanimously that the defendant should suffer
8 death.

9 Or 'We, the jury, find that the defendant should be
10 sentenced to life imprisonment without parole.'" As to that
11 first sentence, of course, the foreman signs it, and the
12 foreman signs the one I just read.

13 Or "We, the jury, are unable to agree unanimously
14 on punishment." And the foreman signs that one.

15 "You have found the defendant guilty of the crime
16 of capital murder of Derrick Stewart. You must now decide
17 whether the defendant will be sentenced to death or life
18 imprisonment. In reaching your decision, you may objectively
19 consider the detailed circumstances of the offense for which
20 the defendant was convicted, and the character and record of
21 the defendant himself. You should consider and weigh any
22 aggravating and mitigating circumstances, as set forth later
23 in this instruction, but you are cautioned not to be swayed
24 by mere sentiment, conjecture, sympathy, passion, prejudice,
25 public opinion, or public feeling.

26 To return the death penalty in this case, you must
27 first unanimously find from the evidence beyond a reasonable
28 doubt that one or more of the following facts existed: That
29 the defendant actually killed Derrick Stewart; That the

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1 defendant attempted to kill Derrick Stewart; That the
2 defendant intended the killing of Derrick Stewart take place
3 or; That the defendant contemplated that lethal force would
4 be employed.

5 Next to return the death penalty, you must find the
6 mitigating circumstances, those which tend to warrant the
7 less severe penalty of life imprisonment without parole, do
8 not outweigh the aggravating circumstances which tend to
9 warrant the death penalty.

10 Consider only the following element of aggravation
11 in determining whether the death penalty should be imposed:
12 The capital offense was committed for pecuniary gain during
13 the course of a robbery.

14 You must unanimously find, beyond a reasonable
15 doubt, that the preceding aggravating circumstance exists in
16 this case to return the death penalty. If this aggravating
17 circumstance is found not to exist, the death penalty may not
18 be imposed, and you shall write the following verdict on a
19 sheet of paper.

20 'We, the jury, find that the defendant should be
21 sentenced to life imprisonment without parole.'

22 If the above aggravating circumstance is found to
23 exist beyond a reasonable doubt, then you must consider
24 whether there are mitigating circumstances which outweigh the
25 aggravating circumstance. Consider the following elements of
26 mitigation in determining whether the death penalty should
27 not be imposed:

28 Curtis Flowers has no history of prior criminal
29 activity; Mr. Flowers has a good prison record with no rules

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1 violations; Mr. Flowers follows the rules and regulations of
2 the prison, does as he is told, and does not cause trouble
3 for guards; Mr. Flowers has a loving, supporting family and
4 many friends; Any and all factors relative to the background,
5 life, environment, and emotional makeup of Curtis Flowers,
6 which would be mitigating circumstances or could be
7 considered mitigating circumstances; Any other circumstance
8 or combination of circumstances of the crime or of the life
9 and character of Mr. Flowers which you believe should
10 mitigate in favor of a sentence of life imprisonment.

11 If you find from the evidence that one or more of
12 the preceding elements of mitigation exists, then you must
13 consider whether it or they outweigh or overcome any
14 aggravating circumstance you previously found. In the event
15 that you find that the mitigating circumstances do not
16 outweigh or overcome the aggravating circumstance, you may
17 impose the death sentence. Should you find that the
18 mitigating circumstances outweigh or overcome the aggravating
19 circumstance, you shall not impose the death sentence.

20 The verdict you return must be written on a
21 separate sheet of paper and signed by the foreman. Your
22 verdict should be written in one of the following forms:

23 We, the jury, unanimously find from the evidence
24 beyond a reasonable doubt that the following facts existed at
25 the time of the commission of the capital murder of Derrick
26 Stewart.

27 List or itemize all facts found, if any, from the list under
28 Section A of this instruction which you unanimously agree
29 exists in this case beyond a reasonable doubt.

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1 Next we, the jury unanimously find that the
2 aggravating circumstance of:" And you "List or itemize all
3 of the aggravating circumstances presented in Section B of
4 this instruction which you unanimously agree exist in this
5 case as to Derrick Stewart beyond a reasonable doubt.
6 Exist beyond a reasonable doubt and is sufficient to impose
7 the death penalty and that there are insufficient mitigating
8 circumstances to outweigh the aggravating circumstance, and
9 we further find unanimously that the defendant should suffer
10 death."

11 That verdict to be signed by the foreman.

12 Or "We, the jury, find that the defendant should be
13 sentenced to life imprisonment." That should be signed by
14 the foreman.

15 Or "We, the jury, are unable to agree unanimously
16 on punishment." And that should be signed by the foreman.

17 "The Court instructs the jury that at this phase of
18 the trial conducted for the purpose of determining the
19 sentence to be imposed upon the defendant, the state and the
20 defendant may elect to stand on the testimony and evidence
21 introduced during the first or guilt phase of this trial, or
22 the parties may elect to introduce additional testimony and
23 evidence as to matters relating to any of the aggravating or
24 mitigating circumstances. In reaching your verdict, you may
25 consider the testimony and evidence presented during the
26 first phase of the trial together with the testimony and
27 evidence, if any, relating to any one of the aggravating or
28 mitigating circumstances presented for your consideration
29 during the second or sentencing phase of the trial."

Court Reads Instructions to Jury

1 "The Court instructs the jury that for this phase
2 of the trial, you shall select from among yourselves a
3 foreman. If you unanimously reach a verdict as to sentence,
4 the foreman shall cause the verdict to be written in the form
5 and manner prescribed in Sentencing Instruction I, and the
6 foreman shall thereafter affix his or her signature to the
7 verdict."

8 "The Court instructs the jury that it must be
9 emphasized that the procedure that you must follow is not a
10 mere counting process of a certain number of aggravating
11 circumstances versus the number of mitigating circumstances.
12 Rather, you must apply your reasoned judgment as to whether
13 this situation calls for life imprisonment or whether it
14 requires the imposition of death, in light of the totality of
15 the circumstances present.

16 I have previously read to you the one aggravating
17 circumstance which the law permits you to consider. This is
18 the only aggravating circumstance you may consider. However,
19 before you may consider this factor, you must find that
20 factor is established by the evidence beyond a reasonable
21 doubt.

22 The Court instructs that you, as individual jurors,
23 must consider mitigating circumstances. Therefore, even if
24 all other eleven jurors find that a certain mitigating
25 circumstance does not exist, if you believe it does exist,
26 you must find that mitigating circumstance, and weigh it in
27 your further deliberations.

28 Before punishing Mr. Flowers with death, all twelve
29 of you must agree on such punishment. Each of you must

Sentencing Phase Argument by Mr. Evans

1 decide the sentence for yourself. In the course of your
2 deliberations, do not hesitate to re-examine your own views
3 and change your opinion if you are convinced it is wrong, but
4 do not surrender your honest conviction as to what you feel
5 the sentence in this case should be, just because of the
6 opinions of your fellow jurors, or just so that you can all
7 agree on a verdict."

8 Ladies and gentlemen, those are the instructions.

9 These are verdict forms that are as described in those
10 sentencing instructions that tells you what to do.

11 And when you reach a verdict, these forms will assist
12 you in preparing that verdict and returning it into
13 court. When you have done so, you can knock on the
14 door, and the bailiffs once again will bring you in to
15 render that verdict. All right.

16 **BY MR. EVANS:** May I see the instructions and the
17 forms, Your Honor?

18 **BY THE COURT:** Uh-hum.

19 FINAL ARGUMENT BY MR. EVANS:

20 Ladies and gentlemen, we are almost at the end of
21 the trial. This has been going on for almost two weeks now.
22 Before I go into this, and I'm not going to be very long; we
23 are going to argue about 30 minutes to the side, and then the
24 case will be yours. But there are a few things that I want
25 to point out. In this first part, I want to go over some of
26 those instructions in a little bit more detail.

27 But as y'all will remember when each of y'all were
28 sitting up here in the witness chair when we were voir diring
29 the jury, you were told at that point what the procedure in

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1 the second phase would be, that we would not get to this
2 phase until such time as the jury knew that the Defendant was
3 guilty and convicted him. That has already been done. So we
4 are in the second phase.

5 This phase now is to try to determine in this
6 particular case what penalty is appropriate. And as the
7 Judge has told you, once we reintroduced all the evidence,
8 everything that y'all have heard and saw in the trial is
9 admissible. All of that is stuff that y'all can take into
10 consideration. Now I'm not going to sit here and try to go
11 back through all that case with you because y'all know what
12 the case was. You just got through with it. I'm not going
13 to sit up here and go back through pictures and diagrams and
14 shoes and things like that. I'm just going to ask that you
15 remember what was in the case.

16 There are a few things about it though that I do
17 want to point out. Now as we told you to start with, I told
18 you and the Judge told you, and I think Defense Counsel did
19 too; at this phase in the trial what we will be doing, the
20 State will be putting on evidence to justify and show you
21 that in this particular case the death penalty is the
22 appropriate penalty. The Defense will be putting on
23 mitigators, and that is exactly what the Judge has read to
24 you. In this case the aggravating factor that by law you
25 must find is that the Defendant committed this crime during
26 the course of a robbery for pecuniary gain; that he killed
27 these people during the course of the robbery, which is the
28 same thing that you have already looked at on the guilt
29 phase. That is one of the things you have to look at in this

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1 case. Now also, as we told you on voir dire, it's not the
2 fact that well, he killed somebody; he gets the death
3 penalty. You sat up here and you listened to the evidence.
4 You know the facts of this particular case, and the facts of
5 this particular case are what warrants the death penalty in
6 this case. The fact that four people that had done nothing
7 to anybody were working, went to work that morning, never
8 dreaming that they would not get to see their family again,
9 never dreaming when they went to work, that that would be the
10 last time they would see any of their friends; four people
11 that for no reason their lives were taken.

12 We are not talking about a type situation where two
13 people get in a fight and somebody gets killed. We are
14 talking about a case where an individual takes a gun, goes to
15 a business because he wants some money or is mad, all tied in
16 together; he takes what he wants and he kills people. And I
17 want you to look at how they were killed. I think that is
18 important. These are basically execution type murders. All
19 four of these victims were shot in the head. He wanted to
20 make sure they were dead. This is the kind of stuff I want
21 you to look at. This is why this case demands the death
22 penalty. Four people were killed. He killed them for no
23 reason, the way he killed them, all of that is important.

24 There are several things -- and I know y'all have
25 sat here and listened to the Court's instructions, and
26 because there are four separate deaths, the Court had to read
27 the basic instructions four different times. But to me, this
28 is the most difficult instruction for a jury to understand
29 that you can have. That's why you need to take your time,

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1 look over it, follow it step by step. That's why on voir
2 dire I asked you specifically if you are picked as a juror,
3 will you go through the instructions and listen to the
4 instructions that the Court gives you because these
5 instructions -- and once you elect your foreman, you can go
6 through the instructions.

7 The Sentencing Instruction SS-1A - that is the
8 first instruction on here - it starts out with the procedure
9 of what you are to do when you start your deliberations. The
10 first thing that you must do, you must unanimously find one
11 of four factors. Now those are the same four factors for
12 each case, and I'm not going to go through them for all four
13 cases, but I'm going to go through them. Those factors are
14 on the first page of the instruction. It's four of them
15 right there. The first one, and this is in the instructions
16 relative to Bertha Tardy, that the Defendant actually killed
17 Bertha Tardy. 2: The Defendant attempted to kill Bertha
18 Tardy. 3: The Defendant intended the killing of Bertha
19 Tardy take place. 4: That the Defendant contemplated that
20 lethal force would be employed. Any one of those factors is
21 sufficient to go further. The simplest one is that he
22 actually killed her because all four of them were actually
23 killed. So we would submit that that one pretty well covers
24 them all because that also includes the fact that he intended
25 that deadly force be used and intended the killing. It's not
26 an attempted killing because she was, in fact, killed so 2
27 really doesn't apply. But all the other three would, but
28 they are all three included in the fact that he actually
29 killed her.

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1 That's the first thing you do on each set of the
2 instructions. You look at those factors, determine which
3 ones of those apply before you go further. Then it says,
4 "Next, to return the death penalty, you must find that the
5 mitigating circumstances" -- now remember what I told you on
6 voir dire; the mitigating circumstances are what the Defense
7 is putting on to try to justify a life sentence. "You must
8 find that the mitigating circumstances, which tend to warrant
9 a less severe penalty of life imprisonment without parole, do
10 not outweigh the aggravating circumstances." The aggravating
11 circumstance in this case is that the capital offense was
12 committed for pecuniary gain during the course of a robbery.
13 So if you find in each case that these individuals were
14 killed - that was the factor of the first group - that this
15 was an offense committed for pecuniary gain during the course
16 of a robbery, then unless you find that their mitigating
17 factors outweigh that, you may impose the death penalty.

18 And that is where we got into the factor the other
19 day about the Court authorizing imposition of the death
20 penalty. You take it step by step. You go through the
21 instructions. Did he kill Bertha Tardy. Was this a robbery?
22 If it is, then if his mitigators don't outweigh that, you can
23 impose the death penalty, and you go further through the
24 instruction. It is complicated, but it's really that simple.
25 The mitigating circumstances that they have given, the Court
26 has given them in this instruction right here, and the Court
27 has gone through them. That he has no history of prior
28 criminal activity; that he has a good prison record with no
29 rules violations; that he follows rules and regulations of

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1 the prison, does as he is told and does not cause trouble for
2 guards; that he has a loving supporting family and many
3 friends; any and all factors relative to the background,
4 life, environment, emotional makeup of Curtis Flowers which
5 would be mitigating circumstances or should be considered -
6 and that is circumstances that you have heard in the record -
7 any other circumstances or combination of circumstances of
8 the crime or of the life and character of Mr. Flowers which
9 you believe should mitigate in favor of a sentence of life.

10 If you feel like those circumstances outweigh what
11 he did, then a life sentence would be appropriate. If they
12 don't outweigh it, the death penalty is appropriate in this
13 case.

14 Once you have done that, even before you reach your
15 verdict, on the next page, which is the form, there are
16 findings that the jury is to make. The first part up here
17 under one, "We, the jury, unanimously find from the evidence
18 beyond a reasonable doubt that the following facts existed at
19 the time of the commission of the capital murder of Bertha
20 Tardy," and this is where the factors go in that he intended
21 to kill her, in this section right here.

22 Then you go to the next section. This is where the
23 aggravating factors go in that you unanimously find. "We,
24 the jury, unanimously find the aggravating circumstance of,"
25 and you write it in here. Above that it says write in the
26 aggravating circumstances presented in Section B of this
27 instruction that you unanimously agree existed beyond a
28 reasonable doubt. Then at that point if you find that the
29 mitigating circumstances do not outweigh that, the foreman,

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1 if you agree, can sign the verdict imposing the death
2 penalty.

3 The penalty in this case is left entirely up to the
4 jury. But that is why I spend as much time as I did on voir
5 dire and the Judge covered this with you too. Each of you
6 told us on voir dire that if the law authorized imposition of
7 the death penalty and the facts justified it, that you could
8 vote for the death penalty. This is a case that the death
9 penalty is appropriate in. I think if you will think about
10 the facts of the case, how this crime was committed, what
11 this Defendant did, the fact that these people didn't do
12 anything to harm anyone; they were just innocent people at
13 work. You can look at all those factors. Look through those
14 factors, and the verdict in this case, I think you will
15 agree, would be, We, the jury, agree on the penalty of death.

16 The facts in this case justify the death penalty,
17 and you are the ones that make that determination. You are
18 the only ones that can look at that.

19 Mitigating factors in there: The Defendant has a
20 lot of family and friends. That was true with each of the
21 victims also. This is a terrible case, a terrible crime.
22 Four people were killed. The verdict in this case should be
23 equal to the crime. I think that the jury will make a
24 determination that the only appropriate penalty for the facts
25 of this particular case can be the death penalty.

26 This phase is completely different than the first
27 phase that you were looking at. In that you had to determine
28 whether he was guilty, look at all the facts of the case. In
29 this case you really don't even have to worry about things

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1 like the bullets and the shoes and all that. It just boils
2 down to one thing: What penalty is appropriate for this
3 Defendant for what he did? And can these mitigating factors
4 that they have brought to your attention outweigh the fact
5 that he deserves the death penalty?

6 Like I told you, I'm not going to be long up here
7 because y'all have heard it all. I do ask that you consider
8 what I have said to you. I ask that when you do go back in
9 the jury room, you return the appropriate penalty in this
10 case in all four cases of the death penalty. And each of
11 these cases, just like when you were back there on the guilt
12 phase, each of these has a separate set of forms. You have
13 got to fill out the forms for each one of the counts that he
14 has been convicted on because he is looking at all four of
15 those as far as sentence also.

16 (State's Counsel confer.)

17 **BY MR. CARTER:** May I proceed, Your Honor?

18 **BY THE COURT:** Yes. You are through, aren't you
19 Mr. Evans?

20 **BY MR. EVANS:** Yes.

21 FINAL ARGUMENT BY MR. CARTER ON SENTENCING PHASE:

22 Good afternoon. Early this morning a lady stopped
23 me and told me she thought I needed to apologize to somebody,
24 and it stunned me, even probably shocked me. And because I
25 have a warrior nature, I backed up and said, "Get away from
26 me." Now I don't think I did anything to apologize, that
27 warrants apologizing. I certainly didn't do anything to
28 anybody knowingly, but if I did something to any of you and I
29 need to apologize, then I apologize as well as to anybody

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else.

Now you had this hard job to do, and so did I. And you went back and you deliberated. You stayed back there for two and a half hours, so I know you deliberated and you thought about it, your job, and you didn't do it automatically. And I thank you for that. I notice when the family of the victims were on the witness stand and telling their stories, many of you cried, and that is understandable. And I would bet that you thought of the victims' families as well as your own families.

But I would also bet that not many, if any, thought of Mr. Flowers' family. Mr. Flowers' family are victims too, not victims in the same manner, but victims too. Had they been able to stop this, I'm sure they would.

When I was nine years old, a little girl knocked my books off my desk, and I picked them up neatly and put them back on the desk, and she did it again. I picked them up again and put them back on my desk again. She did it again. She did it five times. By that time I was enraged, and I wanted to hurt her. And her big sister got between us so that I couldn't get to her. And I'm not proud of this, but I tried to kill her big sister so that I could get to her. But I never could, so I beat the girl up. And the teacher came in, and I was so enraged that I wasn't even afraid of the teacher. The teacher hit me, and I snatched the switch from her, and said, "Don't hit me again." They sent me to the principal's office. I was still enraged. The principal pulled out a knife, and I still wasn't afraid. Looking back, I acted inappropriately because I was nine or ten. I didn't

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1 have sense enough how to act. I hadn't learned. I hadn't
2 been taught.

3 When the schools were integrated, I had to change
4 schools, and about ten of us were taken and placed in this
5 class with all white kids, and all the other black kids were
6 put in this one class. And I was told I couldn't compete,
7 but we ten were told we couldn't compete with the other kids
8 in our class. Within a short period of time not only was I
9 competing, I was beating them. And I was called names, but I
10 didn't get mad and go and get revenge. I believe in the
11 power of love and redemption. Great things have happened as
12 a result of love and redemption.

13 There is a song that has some lyrics. There is a
14 -- (Pause) that say anybody with a heart can love me. And if
15 you can love me, you can also love Mr. Flowers despite what
16 he is accused of. We don't know what love is. God had to
17 tell us one time. He told us in I Corinthians 13, 4 through
18 8. Love suffers long, is kind; love endeth not; wanteth not
19 itself; is not puffed up; does not behave itself unseemly;
20 seeketh not our own; is not easily provoked; thinketh no
21 evil; rejoices not in the evil but rejoices in the truth.
22 Bears all things, believes all things, hopeth all things,
23 endures all things.

24 The incident with the girl and with the school
25 taught me that an eye for an eye, tit for tat, tooth for
26 tooth, doing to others as they have done to you is not proper
27 and not Christian. Anybody who thinks killing a person who
28 has killed somebody else will give them any relief or
29 closure -- I think and this is just my opinion -- is

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misguided and devoid of the true meaning of life. It's your happiness, your closure, your peace; this is just my opinion.

BY MR. EVANS: Your Honor, personal opinions.

I don't think, are appropriate for closing argument from either side.

BY MR. CARTER:

I'm talking about the decision of life and death. If you believe Mr. Flowers killed these people, that is fine; you have said that. But I bet you if Mr. Flowers did it, Mr. Flowers did not go down there to Tardy Furniture Store and stay there nine days trying to decide if he could kill those people or not. If he did it, he snapped, and it happened suddenly. He didn't have a time to cool down, to change his mind.

We have been here nine days, and we know why we have been here. And we know what the decision has to be, one or the other. You never have to vote for death. You never ever have to vote for death. I don't care what they say, and I know I'm right and they know I'm right. Death should be a last resort, and it should be for the worst criminals on earth, and Mr. Flowers is not one of them. Mr. Flowers is not Adolph Hitler. He is not Timothy McVae. He is not Osama bin Laden, and he is not Ted Kezinsky. How is jail without the possibility of parole is too good for Mr. Flowers?

Jim Aiken, our expert, said - a very talented man I might add - said that Mr. Flowers do good in prison. He didn't think Mr. Flowers had any future dangerousness. Mercy alone is enough to vote for life instead of death, and we ask for mercy. Maybe you think Mr. Flowers didn't show any, but

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1 you can show some if you want to. The decision is yours, and
2 you have had nine days to think about it.

3 I know death is a hurtful thing, and unfortunately,
4 it happens to every single one of us. But nobody wants to go
5 like that, and I understand that. I lost two of my brothers.
6 Somebody killed two of my brothers and one of my uncles. And
7 I didn't seek punishment from either because I knew
8 punishment wouldn't do me any good. It may do somebody some
9 good whose life is some kind of way, I guess connected to
10 whether the killer dies, but my life is not connected that
11 way. My life, I feel, and I feel the life should extend
12 beyond an individual regardless of how much we love them.
13 But if you think death is appropriate and it's going to bring
14 closure and peace and joy and do these people any good and
15 you some good, then vote for it.

16 Finally, what we do, how we respond when faced with
17 arduous circumstances defines who we are. Thank you.

18 FINAL ARGUMENT ON SENTENCING PHASE BY MR. DE GRUY:

19 Good afternoon. Nobody has ever disputed that four
20 very fine people were killed on July 16, 1996. We have never
21 disputed that. We certainly understand the suffering of the
22 family. The only dispute we had was who was responsible for
23 those killings. I can imagine the thoughts that were racing
24 through your mind as you listened to that testimony this
25 morning from the State. I will tell you; I was thinking of
26 my father who I lost when I was 16. And I think about that a
27 lot now because I have a 12 year old son, and he is my only
28 son. And on my desk I have a double frame; I have a picture
29 that was taken of my father and I at my first communion. And

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1 we took the exact same pose with my son and I, and they are
2 together and framed on my desk. I know you have all had
3 those kind of experiences in our life. I'm not unique, and I
4 understand that. And I was touched just like all of you as
5 you sat here listening. You have to be.

6 But what do we do with that testimony now?
7 Fundamentally, I believe that we are not a people of
8 vengeance. We are a people of justice, tempered with mercy.
9 It is almost inhuman to put you in this position of how you
10 evaluate this kind of evidence. It's -- Mr. Evans was right.
11 It's not like what you heard at the first phase. How do you
12 deal with this, in the giving of the instructions of law --
13 one, two, three, and you know you can't do that as a human
14 being. And it's a struggle. I don't envy your task. It's a
15 struggle I don't know how you are going to deal with. But
16 each one of you have been given that task, the task of
17 determining the appropriate punishment.

18 Yesterday's verdict, the decision was made. He
19 will be punished, and he is going to be punished severely no
20 matter what you decide today. He is going to die in prison.
21 Will he die when the State of Mississippi says so, or will he
22 die when God says so? That decision has been forced on you.
23 I can't tell you enough times how really unfair I think that
24 is, that we have done that to you. But that is how our
25 system works. That is our how our country works. It
26 entrusts decisions like this, not to lawyers and judges, not
27 to government officials; we trust it to you. I know we were
28 here for four days to get to this jury. None of you were
29 volunteering for this job. I am sure when your name was

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1 called, you were perhaps looking around wondering how come
2 me. I am sure there is not one of you who wouldn't rather be
3 somewhere else today. But this is your task.

4 The State of Mississippi cannot put Curtis Flowers
5 to death without each one of your consent. Each one of you
6 has to give permission. Curtis' life is about to be put in
7 your hands. The question is, is it necessary? Do we have
8 to? Do you have to take his life? I think the answer is
9 clearly no. We don't have to. It's not necessary. He will
10 be removed from society forever. It's not a second chance.
11 He is not being let off light. If you vote for life, it
12 means life without parole, the only option you have.

13 We all recognize the horrendous tragedy on July 16.
14 This community has lived with it since that day. It is not
15 going to change after today. I suspect that most of you knew
16 the extent of this tragedy. None of you were surprised by
17 what you heard this morning. You can imagine; you knew that
18 four people had been killed. You knew that when you walked
19 in, and you knew that when you took the witness stand and we
20 questioned you. You assured the Court; you assured all of us
21 at that time that you would not automatically vote for the
22 death penalty even knowing that four innocent people were
23 killed. At the time you knew that there had been a robbery,
24 and you said, I'm going to consider other factors. I want to
25 know more if I'm selected for this jury.

26 We talked in the abstract back then. Now the Judge
27 has told you; this is something for you to consider. You are
28 authorized to consider. And that is as far -- and the Judge
29 was straight up with you last week. He told you that's as

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1 far as I'm ever going to go. It's up to you, each one of
2 you. You absolutely do not have to do it. It's solely your
3 decision.

4 The Court has now told you based on the evidence
5 that has been presented, what you know about this case, that
6 you can, you can put one thing on death side of the scale.
7 He tells you it's a weighing process. We talked about
8 weighing. It doesn't help a whole lot when, how you attach
9 weight to these things, but the only thing you can put on
10 death side of the scale is the aggravating circumstance, the
11 circumstance that you knew about last week -- there was a
12 killing for money. The Court has told you in the
13 instruction -- and you will have those with you -- that's
14 what you can put on death side of the scale. You have to
15 balance that with everything about Curtis' life, his basic
16 humanity, not just what you have found that he did on that
17 afternoon or that morning. That's what it comes down to.

18 You have to put those, human life on one side of
19 the scale and the robbery for money, the killing for money.
20 You have got to look again because the Judge tells you again
21 you must find beyond a reasonable doubt. And again, you
22 deliberated a very long time yesterday, and the Court has
23 instructed you. You had a night to sleep on it. That is
24 something you have to look at again. If you don't find that
25 one circumstance, your duty is over. If you don't find that
26 today beyond a reasonable doubt, your instructions are clear;
27 you just report that to the Court. We talked about it last
28 week, and the Judge has now instructed you. It can be
29 anything about Curtis' life you can weigh on the other side

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of that scale.

And as I was talking to many of his family and friends and we were trying to figure out who best and what the best cross section of his, of the people he has touched in his life to come forward, it was a difficult task. How do you know about circumstances of someone's life in just a few brief moments from their friends and family? I don't know that I will ever feel like I have done enough.

Mr. Flowers' father came here as the spokesperson for his family, his mother, his brothers, and sisters. He told you about how close they were, how close they were to Curtis; how Curtis would go out and help neighbors, not because he was sent out there, because he just wanted, somebody needed leaves raked. An elderly man needed to be shaved. And of course, he shared with you the great passion in the family for singing, the time they spent singing gospel music together.

Supervisor Forrest came to tell you about his relationship with Curtis and how he tried -- and I think Mr. Carter was referring to if somebody could have stopped this, a man like Mr. Forrest would have if he could have. Tarryon Daniels is a life long friend, played ball with Curtis, fishing. They worked together for years. He is also a singing partner. He used to sing with Curtis.

Kittery Jones is his cousin, and they grew up together. They were more like brothers. Kittery himself is not a singer, unusual in the family. He just enjoyed the listening to the music, listening to Curtis sing.

Then we brought in a man who is an expert in

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1 Corrections because I think you need to know. I think these
2 are concerns you should have, where we are sending this man.
3 Will somebody else be in the picture? He told you over 30
4 years of experience dealing with the penitentiary systems all
5 over the country his involvement in every aspect of
6 corrections. He told you about how Curtis has conducted
7 himself. We didn't talk about during the trial, and many of
8 you knew about the prior trial. We didn't talk about it, and
9 we asked those of you who knew about it to set it aside, but
10 you know now that he has been incarcerated since January of
11 1997. Most of that time he has been on, in maximum security,
12 close security being watched 24/7. Mr. Evans was asking
13 well, doesn't that keep-- doesn't that make him act right?
14 And was inferring that at Parchman, unlike every other
15 penitentiary in the world, everybody gets along well. We all
16 certainly know that is not true. We know the problems in
17 prisons.

18 The point he was making with the 24/7 was you can't
19 get away with anything. Yet Curtis had zero rule violations.
20 He is making an effort to stay out of trouble. He told you a
21 little bit about the environment, how unusual that is, that
22 he would expect 30, 40, 50 violations. Zero violations.
23 It's a seven year period.

24 Mr. Evans said well, you know, someone who did
25 this, don't you think they would be a danger based on the
26 thousands and thousands and thousands of classifications. He
27 said no, and unlike most of his classifications, he did
28 interview in this case because it's an important decision you
29 have to make, and you should have as much information as

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possible.

You heard about what the rest of Curtis' life will be like. You know no matter what, which sentence you choose, there is no more basketball with friends, no more fishing with his father, helping mom and his neighbors. Will Curtis ever be able to share his beautiful God given voice? I hope so. Not for him. But like Kittery told you, just the pleasure to hear him sing. I will concede that as a maximum security inmate, it's unlikely that he will be given that opportunity. I don't suspect that they would do that. But I have hope. There are not many of us who sing well. Kittery admitted he didn't, and I can tell you I can't sing at all. But when I stand in church and hear those truly blessed parishioners around me who can sing, that inspires me. I get that gift; it's not for them. We shouldn't take that gift away from all of us no matter what.

The State cannot take Curtis Flowers' life unless each one of you individually, and the instruction is clear on that, unless each one of you individually make the decision to tell them that they can do that. You don't have to choose death. It's not necessary in this case. Not vengeance, but justice tempered with mercy. It's what we are asking for. I'm not ashamed to ask for it. Another death is not the answer in this case. Like Reverend Latham said, it's time to begin the healing. It's what we agree on. It's time for life.

I have to sit down, and Mr. Evans will be back up here. I'm just begging you, spare my friend's life. Thank you.

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FINAL ARGUMENT BY MR. EVANS:

A few more minutes and this case will go to y'all. There are a few things I want to talk about. Who was there to beg for mercy for the four people that got killed at Tardy Furniture? Opposing Counsel wants to argue to you that the Defendant snapped; it was just a split second thing. How do you snap when you plan and carry out steps of a crime? How do you snap when you walk from your house and get the gun and walk back to your house? How do you snap when you then walk from your house to the store and take the time to deliberately shoot four people in the head and then take the time to take the money out of the cash drawer? That is not snapping.

You are not here to forgive. That is what you have been asked by the Defense to do. You are here for the purpose of determining what penalty is appropriate for Curtis Flowers for what he did. That is what your job is. That is what you have to do. Opposing Counsel wants to say well, he needs to be in prison so he can sing and he can do all these things. These four victims never committed a crime in their life, but don't you think their family would like --

BY MR. CARTER: --Your Honor, I object to that--

BY MR. EVANS: --for them to be able to be in prison--

BY THE COURT: -- Overruled.

BY MR. EVANS:

Don't you think they would like to be able to hear them sing? They don't have that option.

Opposing Counsel says oh, you can lock him down in

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1 Parchman in maximum security, and he is not too dangerous
2 when he is being watched over there. The whole purpose of
3 what we are here for is the facts of this case. Look at the
4 case and look at what he did. The facts justify the death
5 penalty. If you will look at the facts, you will make that
6 determination. This case justifies the death penalty because
7 of what he did.

8 As we covered with you on voir dire, there are only
9 certain cases in Mississippi that the death penalty is even
10 appropriate. This is one of them. And this isn't just one
11 death; this is four deaths. Four separate people's lives
12 were taken for no reason.

13 I'm not going to waste y'all's time by standing up
14 here any more because y'all know from the facts of the case
15 what is there. This is not a case that can be decided on
16 anything except the law and the facts. Unless you find that
17 these mitigating factors that they are telling you outweigh
18 the aggravating factor and what he did, the death penalty is
19 appropriate in this case. As I told you that I would do on
20 voir dire, I told you then that I would be asking for the
21 death penalty, and that is what I am asking you to do. I am
22 asking that you go to the jury room. You go through the form
23 that the Judge gives you, fill it out, and return a verdict
24 on each of the four counts of death because that is the
25 appropriate penalty in this case. You will find that from
26 going through the evidence.

27 That's all I have, Your Honor.

28 **BY THE COURT:** Ladies and gentlemen, it is now
29 time for y'all to retire and consider these options.

Jury retires to consider verdict

1 As I told you, there are four verdict forms, one for
2 each count. When you have reached a decision in each
3 of those counts, then you should fill out this form in
4 accordance with these instructions that I have given
5 you, and knock on the door and return it back into
6 Court. You can go to the jury room. There will be
7 some-- we are going to deliver the exhibits and stuff
8 to you so you will have them for your deliberations.

9 JURY RETIRES TO CONSIDER SENTENCING VERDICT AT 2:50 PM.

10 BY THE COURT: Let me see y'all up here just one
11 second.

12 (CONFERENCE AT THE BENCH WITH THE JURY OUT:)

13 BY THE COURT: I don't know how this happened. I
14 wasn't, I guess I just missed it and y'all did too
15 when you were going through the instructions. The
16 State's Sentencing Instructions A, B, C and D that I
17 read to the jury, all of them had the same language
18 except D, which on this it did not for some reason or
19 other, after "life imprisonment" did not have "without
20 parole." All the others did, and everything else has
21 it. I would like to interline that.

22 BY MR. DE GRUY: Yeah, I think that would be
23 fine.

24 BY THE COURT: Without parole.

25 BY MR. EVANS: No objection. I think you found
26 out earlier in the week none of us can read anyway.

27 BY THE COURT: Well, I just proved I can't.

28 BY MR. DE GRUY: Clyde, you caught everything
29 else. How did you miss that?

Verdict

1 **BY THE COURT:** Okay.

2 (THE JURY WAS DELIVERED THE COURT'S INSTRUCTIONS
3 AND THE EXHIBITS THAT WERE RECEIVED IN EVIDENCE. THE COURT
4 WAS IN RECESS AWAITING THE VERDICT. UPON THE JURY'S KNOCK AT
5 3:49 PM, COURT WAS BROUGHT BACK TO ORDER, AND WITH ALL
6 COUNSEL AND THE DEFENDANT PRESENT, THERE WAS THE FOLLOWING:)

7 **BY THE COURT:** The jury has indicated that they
8 have a verdict?

9 **BY THE BAILIFF:** Yes, sir.

10 **BY THE COURT:** All right, the jury has indicated
11 that they have a verdict at this phase of the trial.
12 I say once again what I said yesterday. I will not
13 tolerate disruptions in this courtroom, whatever the
14 verdict may be on this phase of the trial. The
15 Sheriff is directed to take into custody anybody that
16 does so disturb this courtroom or, in fact, this
17 courthouse. All right. You may bring them in.

18 JURY RETURNS TO THE COURTROOM.

19 **BY THE COURT:** Ladies and gentlemen, have you
20 reached a verdict on each of the counts in this case?

21 **BY A JUROR:** Yes, sir.

22 **BY THE COURT:** Is it, is each verdict on the
23 sentencing phase, the verdict of all twelve of you?

24 **BY A JUROR:** Yes, sir.

25 **BY THE COURT:** Would you hand the verdicts to the
26 bailiffs?

27 (Verdicts handed to the Court and then to the
28 Clerk.)

29 **BY THE COURT:** The Defendant will rise. Read the

Verdict

1 verdicts, ma'am.

2 **BY THE CLERK:** "Your verdicts should be written
3 in one of the following forms: We, the jury,
4 unanimously find from the evidence beyond a reasonable
5 doubt that the following facts existed at the time of
6 the commission of the capital murder of Bertha Tardy.
7 List or itemize all facts found, if any, from the list
8 under Section A of this instruction which you
9 unanimously agree exists in this case beyond a
10 reasonable doubt. That the defendant actually killed
11 Bertha Tardy. We, the jury, unanimously find that the
12 aggravating circumstances of: Write the aggravating
13 circumstances presented in Section B of this
14 instruction if you unanimously agree it or they exist
15 in this case beyond a reasonable doubt. The capital
16 offense was committed for pecuniary gain during the"
17 excuse me, "the course of a robbery. Exists beyond a
18 reasonable doubt and is sufficient to impose the death
19 penalty and that there are insufficient mitigating
20 circumstances to outweigh the aggravating circumstance
21 and we further find unanimously that the defendant
22 should suffer death." Signed foreman of the jury.
23 Verdict form. "Your verdict should be written in one
24 of the following forms. We, the jury, unanimously
25 find from the evidence beyond a reasonable doubt that
26 the following facts existed at the time of the
27 commission of the capital murder of Robert Golden.
28 List or itemize all facts found, if any, from the list
29 under Section A of this instruction which you

Verdict

1 unanimously agree exists in this case beyond a
2 reasonable doubt. That the defendant actually killed
3 Robert Golden. We, the jury, unanimously find that the
4 aggravating circumstances of: Write the aggravating
5 circumstances presented in Section B of this
6 instruction if you unanimously agree it or they exist
7 in this case beyond a reasonable doubt. The capital
8 offense was committed for pecuniary gain during the
9 the course of a robbery. Exists beyond a
10 reasonable doubt and is sufficient to impose the death
11 penalty and that there are insufficient mitigating
12 circumstances to outweigh the aggravating circumstance
13 and we further find unanimously that the defendant
14 should suffer death." Signed foreman of the jury.
15 "Your verdict should be written in one of the
16 following forms. We, the jury, unanimously find from
17 the evidence beyond a reasonable doubt that the
18 following facts existed at the time of the commission
19 of the capital murder of Carmen Rigby. List or
20 itemize all facts found, if any, from the list under
21 Section A of this instruction which you unanimously
22 agree exist in this case beyond a reasonable doubt.
23 That the Defendant actually killed Carmen Rigby. We,
24 the jury, unanimously find that the aggravating
25 circumstances of: Write the aggravating circumstances
26 presented in Section B of this instruction if you
27 unanimously agree it or they exist in this case beyond
28 a reasonable doubt. The capital offense was committed
29 for pecuniary gain during the course of a robbery.

Verdict

1 Exist beyond a reasonable doubt and is sufficient to
2 impose the death penalty and that there are
3 insufficient mitigating circumstances to outweigh the
4 aggravating circumstance, and we further find
5 unanimously that the defendant should suffer death."
6 Signed foreman of the jury.

7 "Your verdict should be written in one of the
8 following forms. We, the jury, unanimously find from
9 the evidence beyond a reasonable doubt that the
10 following facts existed at the time of the commission
11 of the capital murder of Derrick Stewart. List or
12 itemize all facts found, if any, from the list under
13 Section A of this instruction which you unanimously
14 agree exists in this case beyond a reasonable doubt.
15 That the defendant actually killed Derrick Stewart.
16 We, the jury, unanimously find that the aggravating
17 circumstances of: Write the aggravating
18 circumstances presented in Section B of this
19 instruction if you unanimously agree or they exist
20 in this case beyond a reasonable doubt. The capital
21 offense was committed for pecuniary gain during the
22 the course of a robbery. Exists beyond a
23 reasonable doubt and is sufficient to impose the death
24 penalty and that there are insufficient mitigating
25 circumstances to outweigh the aggravating circumstance
26 and we further find unanimously that the defendant
27 should suffer death." Signed foreman of the jury.

28 **BY THE COURT:** Do you want the jury polled?

29 **BY MR. DE GRUY:** Yes, Your Honor.

Jury Polled

1 BY THE COURT: Ma'am, are all of these your
2 verdicts?

3 BY A JUROR: Yes, sir.

4 BY THE COURT: How about you, ma'am?

5 BY A JUROR: Yes, sir.

6 BY THE COURT: You, ma'am?

7 BY A JUROR: Yes, sir.

8 BY THE COURT: You, sir?

9 BY A JUROR: Yes, sir.

10 BY THE COURT: You, ma'am?

11 BY A JUROR: Yes, sir.

12 BY THE COURT: You, ma'am?

13 BY A JUROR: Yes, sir.

14 BY THE COURT: You, ma'am?

15 BY A JUROR: Yes, sir.

16 BY THE COURT: You, ma'am?

17 BY A JUROR: Yes, sir.

18 BY THE COURT: You, sir?

19 BY A JUROR: Yes, sir.

20 BY THE COURT: You, ma'am?

21 BY A JUROR: Yes, sir?

22 BY THE COURT: You, ma'am?

23 BY A JUROR: Yes, sir.

24 BY THE COURT: You, ma'am?

25 BY A JUROR: Yes, sir.

26 BY THE COURT: Okay, I find that the verdicts are
27 unanimous. Mr. Flowers, you have now been convicted
28 of four counts of capital murder, and the jury has now
29 sentenced you to death on each count. By law, those

Trial Adjourned

1 verdicts are automatically appealed to the Mississippi
2 Supreme Court. I appoint the Office of Capital
3 Defense to represent you on that appeal. You are now
4 remanded to the custody of the Sheriff pending that
5 appeal.

6 Ladies and gentlemen, at this time I'm going to let
7 y'all go back to the jury room for just a minute, and
8 I then will have some instructions for the rest of
9 you.

10 DEFENDANT IS ESCORTED FROM THE COURTROOM.

11 **BY THE COURT:** Anything further from the Court?

12 **BY MR. EVANS:** Not from the State.

13 **BY MR. DE GRUY:** No, Your Honor.

14 **BY THE COURT:** Court is adjourned at this time.

15 TRIAL WAS RECESSED ON FEBRUARY 12, 2004.
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Post Trial Motion Hearing

1 (ON MARCH 16, 2004, COURT WAS OPENED IN WINONA,
2 MISSISSIPPI, FOR A HEARING ON POST TRIAL MOTIONS. PRESENT
3 REPRESENTING THE STATE WERE HONORABLE DOUG EVANS AND
4 HONORABLE CLYDE HILL. PRESENT REPRESENTING THE DEFENDANT
5 WERE HONORABLE ANDRE DE GRUY AND HONORABLE STACY FERRARO.
6 THE DEFENDANT WAS ALSO PRESENT:)

7 BY THE COURT: Are we ready to proceed?

8 BY MR. DE GRUY: Yes, Your Honor.

9 BY MR. EVANS: Yes, sir.

10 BY THE COURT: This is cause number 2003-71,
11 State of Mississippi versus Curtis Giovanni Flowers.
12 It is before the Court on a motion for new trial,
13 Mr. Flowers having been convicted of capital murder on
14 February 11th, 2004, and on February 12th, 2004, being
15 sentenced to death by the jury. All right, Mr. de
16 Gruy.

17 BY MR. DE GRUY: Your Honor, we have no
18 additional evidence to present at this time. We have
19 filed the Motion for New Trial, a three page motion
20 which we believe fairly sets forth the objections we
21 made at trial. And with all respect to the Court's
22 orders at trial, we would ask that they be
23 reconsidered. In particular, that the issue on the
24 strikes, the Batson strikes of the jurors in this
25 case; that again reminding the Court of the -- the
26 Court made a prima facie finding of discrimination.
27 And in that so the record is clear, one member of the
28 jury was African-American, in this county which is
29 45 percent African-American. Every single one of the

Post Trial Motion Hearing

1 State's strikes were against African-Americans, and
2 again, our specific objections that there were white
3 jurors who were similarly situated to African-American
4 jurors who were removed. I believe we have clearly
5 made our record at the trial on that. We would ask
6 the Court to again reconsider that ruling in addition
7 to the points we raised in our motion. We have again
8 no additional evidence to present at this time.

9 **BY THE COURT:** Okay, I have got a couple of
10 questions I need to ask.

11 **BY MR. DE GRUY:** Yes.

12 **BY THE COURT:** Okay, in number four on the Motion
13 for New Trial, you ask that all motions that the
14 Defense filed should have been granted. Do you have
15 any specific motions that you are talking about?

16 **BY MR. DE GRUY:** We filed 32 motions or reraised
17 32 motions, and there was a pretrial hearing on those
18 motions.

19 **BY THE COURT:** The reason I ask that is I think
20 most, the vast majority of those were granted, and I'm
21 trying to really understand which ones, which one that
22 I denied that you are objecting to. A lot of them
23 were stock motions.

24 **BY MR. DE GRUY:** Right. The motion -- we filed a
25 motion on two of the cases for a speedy trial, Motion
26 to Dismiss for Speedy Trial. They had never been
27 prosecuted since 1996.

28 **BY THE COURT:** Okay.

29 **BY MR. DE GRUY:** And the Court overruled on that.

Post Trial Motion Hearing

1 **BY THE COURT:** I will adopt my ruling on that
2 one.

3 **BY MR. DE GRUY:** We had moved to invoke the rule
4 prior to voir dire, and the Court denied that.

5 **BY THE COURT:** Okay, I rely on my ruling there
6 too.

7 **BY MR. DE GRUY:** And this motion was also again
8 made at trial when it became apparent in the jury
9 selection that the State was relying on the NCIC
10 reports. We had -- the Court denied us our request
11 for any NCIC reports that they ran, and they clearly
12 did run some.

13 **BY THE COURT:** Okay. On that particular motion,
14 has the State got a response?

15 **BY MR. EVANS:** Yes, Your Honor.

16 **BY THE COURT:** I mean on that issue, excuse me.

17 **BY MR. EVANS:** To start with, the State cannot
18 and does not have NCIC run on all jurors. That is not
19 something that we can do. In this particular case
20 after looking at the questionnaires and the ones that
21 stated that they had criminal records and ones that
22 didn't, there were a couple that law enforcement
23 thought had criminal records. They did run NCIC
24 reports. They were furnished to me. I think there
25 were two that I had that didn't answer. One of those
26 people, even though they had not answered it on their
27 questionnaire, admitted to the Court during initial
28 questioning that they were a convicted felon. So that
29 one was not necessary. The only one of them that I

Post Trial Motion Hearing

1 had that was relevant was one that completely denied,
2 even after the Court's questioning, that he had ever
3 been convicted of anything, and I brought out on voir
4 dire with him that I had a copy of his NCIC report
5 showing that he was a convicted felon, was
6 convicted -- I think it was in Cook County, Illinois,
7 and at that point he admitted that that was true.

8 But to start with, we only had a few, and it was
9 ones that were specifically run that had, law
10 enforcement had a reason to run. It is something that
11 is not discoverable. It is only used for the purpose
12 of trying to determine if someone is a competent
13 juror. And in this particular case that did, in fact,
14 possibly save a mistrial on this case because we were
15 able to eliminate someone that was apparently trying
16 to sit on the jury that had a criminal record. So
17 it's not run on all jurors. It is something that we
18 had on a couple, and we made it be known to the Court
19 what we had on that juror.

20 **BY THE COURT:** Any response to that?

21 **BY MR. DE GRUY:** Yes. As far as the jurors that
22 we know they used them on, we know and I believe the
23 District Attorney has acknowledged that they did run
24 others. I think that what they ran, the Court needs
25 to see what they ran, and I think it also ties in with
26 the entire jury selection process and particularly, if
27 all the jurors that they ran NCIC's on were African-
28 American. We don't know because they are refusing to
29 disclose the NCIC's that they ran.

Post Trial Motion Hearing

1 **BY MR. EVANS:** I think I have answered that, Your
2 Honor. We did not--

3 **BY THE COURT:** -- I think you just said you did.

4 **BY MR. EVANS:** Yes, sir.

5 **BY THE COURT:** His answer, if I can understand it
6 correctly, is the ones that he did run he furnished.
7 The ones, the rest of them he didn't run.

8 **BY MR. EVANS:** The only ones that were run that I
9 know of are ones that had either admitted that they
10 had criminal records -- the ones that law enforcement
11 had some reason to believe had a criminal record. And
12 the whole purpose of this, as this Court is well
13 familiar, a case that I had in Attala County. We
14 ended up with a convicted felon on the jury. My
15 argument then was that that would be of benefit to the
16 defense, not the state, but the Supreme Court reversed
17 the case because that juror did not answer.

18 So our benefit is not necessarily for jury
19 selection, but it's to make sure that the Court
20 doesn't end up with somebody on a jury that may be a
21 convicted felon. Anyone that came back that had a
22 record that we had we would definitely have to furnish
23 to the Court because we don't want somebody sitting as
24 a juror that would cause a mistrial.

25 **BY THE COURT:** I will adopt my ruling on that,
26 the ruling denying it. Okay.

27 **BY MR. DE GRUY:** That's the extent of the
28 pretrial motions that were ruled on at the December
29 hearing.

Post Trial Motion Hearing

1 **BY THE COURT:** Okay. All right, the next one is
2 the motions that I granted for the State which should
3 have been denied. What specifically are you talking
4 about there?

5 **BY MR. DE GRUY:** (Pause) I don't have a motion,
6 Your Honor, that they made a formal motion.

7 **BY THE COURT:** Okay. The next one is number six.
8 You are talking about the jurors who were excused for
9 cause that should not have been excused. What
10 particular jurors was that?

11 (Pause while Mr. de Gruy looks through jury lists.)

12 **BY MR. EVANS:** Your Honor, while he is looking,
13 from my memory, the only ones that were struck for
14 cause were on the Court's motion. The only ones that
15 the State moved for cause I don't believe that the
16 Court agreed to excuse.

17 **BY THE COURT:** Well, most of them that were
18 excused for cause were both sides agreed that they
19 could be excused for cause.

20 **BY MR. EVANS:** Yes, sir. But any that the State
21 just specifically asked for cause that were not agreed
22 on, I don't think the Court granted my motion on any
23 of them. I think there were about three that I asked
24 to be struck for cause, and I don't believe any of
25 them were.

26 **BY MR. DE GRUY:** Your Honor, I don't think it's a
27 matter of whether they were removed on his motion.
28 The fact that they were removed for cause -- and I'm
29 looking for the juror's name.

Post Trial Motion Hearing

1 **BY THE COURT:** Well, that is part of your motion
2 is though is that it was on his motion that I excused
3 some for cause.

4 **BY MR. DE GRUY:** Or on the Court's.

5 **BY THE COURT:** Or on the Court's. Well, I
6 understand that. Most of them that were excused for
7 cause were after they got on the stand and admitted
8 among other things that they could not be fair and
9 impartial or that they had an opinion. After most of
10 those -- I would say 95 percent of them or better --
11 both sides put in the record that they had no
12 objection to them being excused for cause. So I'm
13 just trying to find out which ones we are talking
14 about.

15 (Pause while Mr. de Gruy looks further through his
16 jury lists.)

17 **BY MR. DE GRUY:** Your Honor, I apologize. I
18 cannot find a juror unless I have another strike
19 sheet. I thought I had consolidated them all.

20 **BY THE COURT:** Okay. Well, as I have just said,
21 there were very few that were excused for cause that
22 y'all did not both sides agree that they should be
23 excused for cause. As I recall, most of them was
24 because they said they couldn't be fair and impartial
25 or -- well, and there were some on the death penalty
26 question obviously. Those two things took out most of
27 them. Not knowing which jurors you are talking about,
28 I will have to adopt the ruling that I made at the
29 time of the trial as being the ruling of the Court on

Post Trial Motion Hearing

1 this particular motion on that issue. I would assume
2 it's the same way on number seven on the ones where
3 you asked that they be excused?

4 **BY MR. DE GRUY:** Yes, Your Honor.

5 **BY THE COURT:** --for cause. Okay, same ruling.
6 Number eight is on the NCIC reports. I think we have
7 just been over that, and I have ruled on that. Number
8 nine is about limiting voir dire. What in particular
9 are you talking about there, Mr. de Gruy?

10 **BY MR. DE GRUY:** I was attempting to question the
11 jurors about their consideration of mitigation. It
12 was, I believe, specifically during -- no, it was
13 whether or not the juror could consider mitigation.
14 The juror was -- I removed him for cause ultimately,
15 but I wanted to question him further to develop the
16 Witherspoon, the reverse Witherspoon, Morgan strike on
17 this juror. He was -- we objected at the time to
18 being limited in our questioning of him.

19 **BY THE COURT:** Okay. That is to one particular
20 juror?

21 **BY MR. DE GRUY:** It was-- yes. The questioning
22 was on a specific juror.

23 **BY THE COURT:** Okay, then the Court finds that
24 that issue should be overruled simply for the fact
25 that you excused him for cause. Or there may be other
26 reasons--

27 **BY MR. EVANS:** -- I think--

28 **BY THE COURT:** --and I probably ruled on that
29 during the-- in the transcript. I don't know exactly

Post Trial Motion Hearing

1 which juror we are talking about, but if you excused
2 him for cause, I don't see where there is any
3 prejudice there.

4 Okay, the next one is on the Batson issues. I
5 think that issue has been developed extensively.

6 **BY MR. EVANS:** Your Honor, I would like to make
7 something clear in the record on number ten, if I may.

8 **BY THE COURT:** Okay, the first thing let me say
9 is the original jury of twelve was ten white and two
10 black. The next day -- and I have the record here
11 before me. Those twelve were seated, I believe on
12 Wednesday; is that right?

13 **BY MR. EVANS:** Yes, sir.

14 **BY THE COURT:** They were seated on Wednesday.
15 And by agreement of all parties, we agreed to come
16 back the next day and seat the alternates, but to go
17 ahead and get twelve seated which we did. Mr. Booker
18 was one of those. As the record reflects, and I think
19 having looked at it, I think it adequately reflects
20 the situation that occurred. He contacted the
21 bailiff. The bailiff contacted me, and overnight he
22 determined he could not be fair and impartial. He had
23 made up his mind as to the guilt or innocence of
24 Mr. Flowers, and his opinion was that he was innocent
25 and no evidence was going to change his mind. He
26 indicated he could not be fair to both parties in that
27 case. So we dismissed him and seated the alternate,
28 and that left one black juror on the jury. The
29 alternate that was seated was a white female. And

Post Trial Motion Hearing

1 y'all can put anything in the record you would like on
2 that. I think that reflects what happened.

3 BY MR. EVANS: The Court has covered what I
4 wanted to cover for the record.

5 BY THE COURT: And I have read the record, and I
6 think the transcript itself adequately provides a
7 record as to what happened. I think that was the
8 proper procedure. In part -- I just think it was
9 proper. The other thing is I think in Jenkins v.
10 State, which is a case that was my case in Attala
11 County; Mr. Evans was the prosecutor. We had a
12 situation where we seated thirteen, but it was the
13 wrong thirteen. One that wasn't called sat, and one
14 that was left. And we didn't find out until the
15 middle of the trial, and it was a mistrial, and we had
16 another trial on it. And the issue was raised as to
17 how that procedure should have been done. The Court
18 held that we should have, that maybe shouldn't have
19 done a mistrial, but it was not error. But what the
20 proper procedure was was to seat the alternate.
21 That's what we did in this case. So I think we
22 followed, and I think there is precedent for what we
23 did, although I think it was the only avenue for us to
24 go at that time.

25 And as to the record as to the Batson challenges,
26 the prima facie part of the Batson, the race neutral
27 reasons and the rebuttal, I think there is an adequate
28 record on all that. I think my rulings on that are
29 correct, and I adopt those rulings.

Post Trial Motion Hearing

1 Number 11 about the rank speculation from
2 Dr. Hayne. I don't know what you are talking about
3 there.

4 **BY MR. DE GRUY:** He testified that an injury to
5 Ms. Rigby could have been from defense posturing or a
6 fall. And it could have been either one, and he had
7 no way of saying medically, certainly not within a
8 reasonable degree of medical certainty what caused the
9 injury.

10 **BY THE COURT:** Well, Dr. Hayne has testified in
11 this Court I can't tell you how many times. He has
12 testified in cases I have been involved with for
13 fifteen or twenty years, and he is adequately
14 qualified to make those, to give those opinions. It
15 is within his expertise, and it's not speculation.
16 And there was no -- there is nothing in the record
17 really where he was attacked as to whether that was
18 expertise. So that is overruled.

19 Expert testimony concerning shoe comparisons from
20 an unqualified witness.

21 **BY MR. EVANS:** Your Honor, I would ask to be
22 heard just briefly on that one.

23 **BY THE COURT:** Okay.

24 **BY MR. EVANS:** If I understand what this motion
25 is, it's about the officers saying that they looked at
26 everybody's shoes. This is something we are not
27 talking about two of the same type of shoe and pinning
28 down where there are any little differences in it. We
29 are talking about completely different types of shoes,

Post Trial Motion Hearing

1 flat sole shoes in relationship to tennis shoes,
2 things like that. This is not something that would
3 require expert testimony. It was offered as lay
4 opinion. None of these witnesses were offered as
5 experts, and under my interpretation of what the law
6 is now on expert and non-expert testimony, this is not
7 something that should have required expert testimony.
8 It was lay opinion, and each of these people had a
9 sufficient amount of information presented to the
10 Court to allow their testimony as to their personal
11 knowledge and personal opinion.

12 **BY THE COURT:** Mr. de Gruy. Is that what we are
13 talking about?

14 **BY MR. DE GRUY:** Yes, Your Honor; that is.

15 **BY THE COURT:** Okay. I find that anybody could
16 make those opinions as to what type of shoes, what a
17 shoe sole looked like and whether it looked like the
18 imprint. That would be within almost anybody's
19 ability to make, to give that opinion, so that is
20 overruled.

21 Which hearsay testimony from Sheriff Thornburg?

22 **BY MR. DE GRUY:** He testified concerning, that
23 Doyle Simpson told him that his gun was stolen. It's
24 actually contradicted by Mr. Simpson's testimony that
25 he didn't make a complaint that his gun was stolen.

26 **BY MR. EVANS:** Your Honor, the best I can
27 remember, that went in basically as him explaining why
28 he went to Angelica. It was to investigate the fact
29 that a gun had been stolen. It was not anything that

Post Trial Motion Hearing

1 was even introduced for the proof of the fact, just to
2 show why he was there and what he was doing there at
3 the time. Plus Doyle testified, he said the gun was
4 stolen. But as far as the way it came in from the
5 Sheriff, it was to explain why he was down there.

6 **BY THE COURT:** Okay, it was just a report. In
7 any event, Doyle Simpson testified subject to
8 cross-examination on that issue. So that is
9 overruled.

10 On the admitting the enlarged gruesome
11 photographs, really my ruling is pretty clear on that.
12 One, I do not find that the photographs were
13 illegally, were photographs that were so gruesome as
14 to the point where they could not be admitted at
15 trial. There were a limited number of photographs
16 compared to what the State had. The fact that they
17 were enlarged, I think, is of no consequence. I think
18 they could have been enlarged and admitted without
19 admitting the little ones, and I think in effect, it
20 was better for the jury to understand, gave the jury a
21 better basis of understanding the scene with the
22 enlargements than the small ones. So that is
23 overruled.

24 The next one is on my ruling on the lady when she
25 gave her opinion about the popularity of the Grant
26 Hill Filas.

27 **BY MR. EVANS:** Your Honor, on that, I would like
28 to make clear, and I know this is in the record, but I
29 would still like to make the point that the Defense

Post Trial Motion Hearing

1 was allowed to go into how many of these shoes had
2 been sold statewide, worldwide. They were entitled,
3 they were allowed to go into all of that. And I don't
4 see that they were limited in any form or fashion on
5 that.

6 **BY THE COURT:** Mr. de Gruy. Any response?

7 **BY MR. DE GRUY:** No, Your Honor.

8 **BY THE COURT:** Okay. The Court's ruling was not
9 that that type testimony, that the popularity of that
10 shoe was irrelevant. The ruling was that her opinion
11 as to whether they were popular was irrelevant. One,
12 to give a lay opinion, she must give some kind of
13 basis for that opinion, but in addition to that, there
14 had already been a lot of testimony about the
15 popularity of the shoe, and her opinion as to the
16 popularity of it is irrelevant. But as a 403 ruling,
17 it is ruled as cumulative at that point in time.

18 All right. The next is on the uncorroborated and
19 unreliable testimony of Odell Hallmon. That was
20 sufficiently covered at trial in that there was a
21 cautionary instruction given twice, once when he
22 testified, once at the end. There was another
23 instruction also given at that time, I believe, when
24 he testified. Anyhow, the Court required that his
25 criminal record be told to the jury at that time, so
26 they had all that information. The case law is
27 sufficient on that that I think that is admissible
28 testimony. It is up to the jury to decide whether to
29 believe it or not.

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1 The 404 question raised in 17, I don't know which
2 one you are talking about.

3 **BY MR. DE GRUY:** That was the testimony in Mr.
4 Hallmon's testimony.

5 **BY THE COURT:** There was no limiting instruction
6 for a witness.

7 **BY MR. DE GRUY:** There was no limiting
8 instruction to his testifying concerning -- the
9 substance of his testimony, he brought out other
10 crimes evidence, alleged that Mr. Flowers had
11 committed other crimes or bad acts. There was no
12 limiting instruction to that.

13 **BY MR. EVANS:** What other -- I don't understand
14 what other bad act he is referring to, Your Honor.

15 **BY THE COURT:** I don't recall that either.

16 **BY MR. EVANS:** If he is referring to the fact
17 that he was asked to help the Defendant make up a
18 statement. To start with, as this Court is well
19 aware, but for the record was a defense witness in
20 Flowers II. In this case he admitted that he lied in
21 Flowers II which we were not, did not go into that
22 with the jury. We just went into the fact that he had
23 agreed with the defense to make up a version about
24 what happened. And all of that is related to this
25 particular crime. It's not another crime.

26 **BY THE COURT:** Is that what you are talking
27 about?

28 **BY MR. DE GRUY:** The Court, the allegation that
29 Mr. Flowers suborned perjury in attempting to get him

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1 to give false testimony. The Court ruled that that
2 was admissible, and the Court ruled that that -- as
3 the notes I have, that the Court said that was part of
4 a plan. That was the exception that it went under,
5 and there was no objection-- no limiting instruction
6 given to the jury on that. That is basically 17, what
7 we are raising in number 17.

8 **BY THE COURT:** Okay, I'm going to adopt my ruling
9 at trial on that.

10 Okay, number 18. The question about the
11 polygraph examination, I mean it wasn't a question,
12 but the response from Odell Hallmon on the polygraph,
13 as I recall, was an unsolicited response from him.
14 But it was done on cross-examination. It was not done
15 by the State. And it also did not -- all that said
16 was there had been one. It did not say what the
17 results were. I do not find that to be error.

18 Object to the battery receipt with no connection
19 to the case. I believe the relevance of that was the
20 time on that battery receipt, was it not?

21 **BY MR. DE GRUY:** That was what our objection was.
22 The receipt was dated after the crime.

23 **BY MR. EVANS:** Which battery receipt? Are we
24 referring to the batteries, Your Honor, that were
25 purchased by Mr. Collins on the day of the crime, or
26 are we referring to the receipt for the batteries that
27 were dumped off the vehicle? I don't know which ones
28 we are talking about.

29 **BY MR. DE GRUY:** Only one battery receipt was

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1 introduced into evidence. The battery receipt
2 received by Tardy Furniture for the batteries that
3 were allegedly broken by Mr. Flowers.

4 **BY MR. EVANS:** And that was relevant because this
5 is the batteries that started the whole case. That is
6 the batteries that he dropped off the vehicle and
7 admitted in his own statement that he dropped off the
8 vehicle and that the money was being held out of his
9 check for.

10 **BY THE COURT:** Right, and I think that was my
11 ruling. If not, it's what it is now.

12 Number 20. What does -- what are we talking
13 about there, Mr. de Gruy? The last witness.

14 **BY MR. DE GRUY:** Yes.

15 **BY MR. EVANS:** Your Honor, in response to that,
16 there was nothing about victim character brought out
17 with him. This witness was important because no one
18 had shown what time that victim went to work. We were
19 trying to show what time he went to work. The only
20 thing that he brought out is that they had spent the
21 night together, what time he brought him to work the
22 next day, and who he saw there when he brought him. I
23 think Mr. Golden was present when he brought him
24 there. It's for a time factor. It also shows and
25 explains to the jury this is the only witness that did
26 anything to explain to the jury why there really were
27 no photographs of him, that he did live for a while.
28 He explained approximately how long he lived, where he
29 was during that time, and he said he visited him in

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1 the hospital while he was still living. So it was
2 necessary for a time factor and also to explain, help
3 explain what Dr. Hayne followed up with about why that
4 autopsy was done later and there was some medical
5 intervention. We could have brought in local doctors
6 and nurses to go through all that. But for saving
7 time, we didn't go into all that, and he was the only
8 witness that we even put on that explained that he was
9 in the hospital here.

10 **BY THE COURT:** Anything else?

11 **BY MR. DE GRUY:** No, Your Honor; we don't.

12 **BY THE COURT:** The Court found at trial and finds
13 now that it had some relevance in relation certainly
14 to the time in which he was, when Mr. Stewart arrived
15 at the business. In the overall scheme of things,
16 probably it had that probative value, but other than
17 that, didn't have a whole lot of probative value but
18 had no prejudicial effect. That was the 403 ruling
19 that the Court had.

20 In the surrebuttal issue, the rules don't
21 necessarily allow surrebuttal. It's within my
22 discretion to do that. It has to be when new matters
23 are brought up, and I found that that did not happen
24 in this case, so that's the reason I did not allow
25 surrebuttal. I also don't find that the Defendant was
26 prejudiced by that. I do find that the Defendant was
27 not prejudiced by that.

28 I don't understand number 22.

29 (Off the record while Mr. de Gruy looks in his

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notes.)

1
2 **BY MR. DE GRUY:** Your Honor, it was during the
3 testimony, yeah, the testimony of Connie Moore, and
4 the objection was to the phrasing of the question to
5 Ms. Moore which implied -- let me make sure. The
6 question was after Curtis killed them or he came there
7 after Curtis killed them. It implied in the question
8 guilt. There was an objection made to that. (Pause)
9 And that's the notes I had on that question. We made
10 an objection; it's on the record.

11 **BY THE COURT:** And I overruled the objection?

12 **BY MR. DE GRUY:** And you overruled the objection.

13 **BY THE COURT:** Okay. I will adopt the ruling I
14 made at the time that was done, and it was in relation
15 to the testimony of Connie Moore; is that right?

16 **BY MR. DE GRUY:** Yes, sir.

17 **BY THE COURT:** That would direct somebody's
18 attention to what we are talking about; right?

19 **BY MR. DE GRUY:** Yes, Your Honor.

20 **BY THE COURT:** Okay. On the victim impact
21 evidence, you made your objections at trial on that.
22 I think my ruling was correct on that, and I adopt
23 that ruling. Where did I limit you on mitigation?

24 **BY MR. DE GRUY:** We sought to question a witness
25 who had sung with -- Tarryon Daniels. He had sung in
26 the choir with Mr. Flowers, and I believe the State's
27 objection was that it would be somehow execution
28 impact because this witness -- the point was, of his
29 testimony was how Curtis interacted with this singing

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1 group and the effect he had on his singing group in
2 his life, not how in executing Mr. Curtis, Mr. Flowers
3 would have on the singing. But if he simply -- we
4 were attempting to elicit testimony that he gave up
5 the singing group and quit singing because he couldn't
6 sing without Mr. Flowers, that he had lost that either
7 way, no matter what the jury was going to do. We
8 weren't attempting to show any type of execution
9 impact. We were simply trying to show the effect that
10 Mr. Flowers had on the people around him. And the
11 Court didn't allow me to ask that question or let that
12 answer be made.

13 **BY MR. EVANS:** I don't remember anything like
14 that that the Court didn't allow, Your Honor. The
15 only thing -- and I can't remember specifically. I
16 think the only objection, and we didn't have much to
17 say to or about any witnesses that they put on in
18 mitigation. I think there was one question asked
19 about what impact his death would have on a singing
20 group which is improper, and we objected to that. But
21 we didn't object to anything that they wanted to put
22 on about his life and things like that. That's the
23 only thing that I can remember that we even objected
24 to other than the so-called expert. I think we had an
25 objection on that. But I can't remember anything that
26 he is talking about.

27 **BY THE COURT:** I don't recall it either. I will
28 adopt whatever ruling I made at trial on that, and say
29 that too I not only didn't limit it, I allowed the

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1 expert to testify, and that may have been stretching
2 the rules there.

3 On the instructions, the instructions are what
4 they are, and I have ruled on those, each one at
5 trial. Your objections, Mr. de Gruy, are I think
6 adequately preserved in the record, and I think the
7 jury was adequately instructed. In fact, I am
8 confident they were, so that part of it is overruled.

9 The Court not only has examined the motion, heard
10 the arguments of Counsel, but has examined certain
11 portions of the transcript in relation to some of
12 these issues to make sure of exactly what I ruled, and
13 after doing that, the Court finds that the Motion for
14 New Trial has no merit and is therefore overruled.

15 Mr. Evans, you should prepare me an order to that
16 effect.

17 **BY MR. EVANS:** Yes, sir.

18 **BY THE COURT:** Anything else?

19 **BY MR. DE GRUY:** No, Your Honor.

20 **BY THE COURT:** Okay. Court will be in recess.

21 TRANSCRIPT CONCLUDED.

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FILED

APR 14 2004

JULIE H. HALFACRE, CIRCUIT CLERK

BY _____ D.C.

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STATE OF MISSISSIPPI

COUNTY OF MONTGOMERY

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